INTERIM STUDY
BY THE
SUBCOMMITTEE ON AGRICULTURAL LANDS

Public Access to Public Lands

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PUBLIC ACCESS TO PUBLIC LANDS

A REPORT TO THE

FORTY-FIFTH LEGISLATURE

Subcommittee on Agricultural Lands

December 1976

Membership

Subcommittee on Agricultural Lands

Sen. Carroll Graham, Chairman	Rep. Verner Bertelsen, Vice-Chairman
Sen. Elmer Flynn	Rep. Fred Barrett
Sen. Jack Galt	Rep. James Fleming
Sen. George Roskie	Rep. Al Luebeck

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The Subcommittee on Agricultural Lands has concluded that:

1) Some access problems exist, and that these problems are caused by changing patterns of land ownership and increasing demands from recreationists; blocks of public land once available are now closed due to lack of legal access.

2) Land management agencies, such as the BLM, U.S. Forest Service, Department of State Lands, and Department of Fish and Game should concentrate more on negotiations for improved access to public lands with landowners, and that the Department of Fish and Game, as the major recreation arm of the state, has been lax in negotiating access. Fish and Game should make acquisition and negotiation of access a major priority and should strive to improve landowner-sportsmen relations.

3) The Department of State Lands' recreation inventory process warrants approval and that recreational use on high value parcels should be encouraged when it is compatible with other operations and when the school trust fund is compensated for that use.

4) Although an access problem does exist, no new legislation granting access need be recommended at this time.

5) An accurate and current inventory of all county roads would help alleviate the access problem, and in support of this finding, the subcommittee recommends adoption by the legislature of the proposed section 47A-6-926 of the Trafficways Code recommended by the State Commission on Local Government.

INTRODUCTION

The Committee on Priorities directed the Subcommittee on Agricultural Lands, which is composed of members of the House and Senate Natural Resources and the Agriculture, Livestock, and Irrigation Standing Committees, to:

> "study the scope and possible solutions of the problem of public access to public and private lands and waters, including fishing and hunting, during the 1975-77 legislative interim. The assignment arose as a result of introduction of at least five bills and resolutions on the subject of access to public lands during the 1975 legislative session. Those bills and resolutions included HJR No. 29, requesting a study of the problems of access; HB No. 43, prohibiting fees for fishing rights on federal and state lands; HB 98, concerning recreational use of state land and the right of access; HB No. 79, concerning recreational use of waters; and SJR No. 26, concerning fishing access to public lands." (See Appendix A for the full text of these bills and resolutions.)

With the advent of the introduction of the above or similar legislation, each legislative session brings considerable controversy and ill will between landowner and sportsmen groups. The subcommittee attempted to distill the rhetoric resulting from this conflict and found the situation to be complex at best. The lack of comprehensive evidence of specific closures of access contributes to the elusiveness of a clear view of the extent of the problem and a practical solution to it. An undeniable fact of the overall public access question is its importance in the minds of landowners and sportsmen. The issue stems from the very basic ideas of private property vs. public need. Through its study, the subcommittee attempted to provide a constructive forum for discussing and analyzing the assertions from all sides of the access situation and how they could best be resolved.

The subcommittee recognized at the outset of its study the need for public participation in the study. They directed the researcher to conduct a representative survey of state land lessees and planned an extensive public hearing. Since the public use of and access to school trust lands was paramount in the conflict, a substantial portion of the study was directed to these lands in particular.

This report contains a limited analysis of the general access problem, a detailed discussion of the recreational use of school trust lands, some existing remedies, and possible solutions suggested at the public hearing. Staff surveys, the public hearing, interviews, and a review of the literature on the access question constitute the basis for this report. The subcommittee's deliberations were based on this information.

Throughout its deliberations, the subcommittee emphasized the complexity of this problem and the fundamental philosophical differences associated with it. For these reasons, a practical resolution is not easily determined.

In the next section, the progress of the subcommittee will be highlighted. Reflected in these deliberations are the members' efforts to arrive at conclusions that would both ensure the public's access rights while protecting the legitimate private property interests of landowners.

SUBCOMMITTEE DELIBERATIONS

The Subcommittee on Agricultural Lands held six meetings during the interim. The first occurred on April 18, 1975 and coincided with the final days of the 1975 legislative session, in which the five bills and resolutions that prompted this study were contested. Although the first meeting was primarily organizational, the subcommittee determined the direction of the study by focusing on school trust lands, which remained paramount throughout their deliberations. At this meeting, the subcommittee directed the researcher to prepare a survey of state land lessees to determine the impact of public access on their leaseholdings. Concern over compensation of the school trust for recreational use was also voiced at this meeting.

At the September 16, 1975 meeting, the subcommittee began to work with computer maps provided by the Department of Community Affairs Research and Information Division, which showed land ownership and recreation potential on certain lands. The subcommittee hoped to use these maps to help determine the extent of the access problem and the location of any particularly high pressure areas. Again concentrating on state lands and after receiving arguments in support of and against the necessity of compensating the school trust for recreational use, the subcommittee came to the position, without actually voting on it, that the school trust lands should be managed by the lessee and that any use required compensation. At this meeting, the subcommittee heard a presentation by the Department of State Lands on their recreation inventory program. The subcommittee expressed an interest in pursuing the program as a possible means of alleviating the problem of access to and use of state lands.

At the suggestion of former State Lands Commissioner Ted Schwinden, the subcommittee began its third meeting on January 16, 1976 with a tour of his department in order that they might be more familiar with its operations and consequently not take any actions jeopardizing the school trust. The subcommittee then made plans for a public hearing to be held May 15th in Lewistown, which was thought to be a central location that would enable more citizens to attend. The Department of State Lands presented maps and statistical information on the recreational inventory, which the subcommittee reviewed. The subcommittee then received further information on the computer mapping project. Senator Roskie moved that the cost of a statewide mapping program be ascertained and a request made to the Departments of Natural Resources, Community Affairs, Fish and Game, and Lands to jointly finance and produce such maps at the earliest possible date. The motions carried. The subcommittee thought at that time that the maps would better enable them to determine the extent of the problem and provide a resource management tool for the various state agencies involved.

The subcommittee reviewed the preliminary responses to the questionnaire sent to state land lessees and expressed concern that the results not be misused. The subcommittee felt that the survey showed a willingness by lessees to work with the public in finding workable solutions to the access problem.

The subcommittee met for a fourth time the evening of May 14th to set ground rules for the public hearing. Because of its importance, the minutes of the May 15th hearing are reprinted in full in Appendix G.

At its August 30th meeting the subcommittee reviewed the hearing testimony and expressed satisfaction with the attendance and success of the hearing. The consensus of the subcommittee with the exception of Representative Luebeck, after the hearing was that perhaps the access problem was not as great as it had originally appeared. The members agreed that one of the major areas of difficulty was uncertainty over the status of many unimproved rural roads in the state. Bob Person, Research Director, presented to the subcommittee a discussion of the legal status of county roads, after which the members decided that requiring counties to maintain an accurate road inventory would help alleviate the problem considerably. The subcommittee voted to endorse the proposed section 47A-6-926 of the Trafficways Code recommended by the State Local Government Commission that would require counties to maintain such an inventory by 1981.

At this meeting the subcommittee also reconsidered the computer mapping project that had been completed on two sample counties, Custer and Beaverhead. The subcommittee decided that the maps were too cumbersome and detailed for their purposes and so voted to abandon the project. The members expressed the hope that the various land management agencies would make use of this computer data in carrying out their respective mandates. The final meeting for the subcommittee was planned for mid-October at which time the members would make final recommendations to the legislature.

The subcommittee met for the last time on October 26, 1976. After reviewing the draft of the final report, the members suggested some modifications to be included in the final version. The subcommittee voted to approve the report with the subcommittee's changes. In summing up their study of public access, the subcommittee voted to forward the following conclusions and recommendations to the 1977 Legislature:

1) "The subcommittee recognizes that some access problems exist. These problems are caused by changing patterns of land ownership and increasing demands from recreationists. Blocks of public land once available are now closed due to lack of access."

2) "Land management agencies such as the Bureau of Land Management, the United States Forest Service, the Department of State Lands, and the Department of Fish and Game

should concentrate more on negotiating better access to public lands with landowners. The Department of Fish and Game as the major recreation arm of the state has been lax in negotiating access. The Fish and Game Department should make acquisition and negotiation of access a major priority. Landowner-sportsmen relations should be improved and this should be the prime responsibility of the Department of Fish and Game."

3) "The subcommittee decided that although an access problem does exist, it does not recommend any new legislation granting access at this time."

The subcommittee agreed informally to endorse the Department of State Land's recreation inventory as a potential means of easing the access situation.

In particular the subcommittee thought that the recreation inventory could provide both benefit to the recreationists and income to the school trust where recreational use was compatible with existing operations on a leaseholding.

These four findings and recommendations together with the Trafficways Code section endorsement adopted earlier conclude the subcommittee's deliberations. The remainder of the report contains the research materials upon which the subcommittee based their decisions and that arose as the study progressed.

THE ACCESS PROBLEM

Public Land in Montana

The state of Montana is composed of 93,217,040 acres or 145,651 square miles of land.[1] Ownership of this land is divided among private individuals and corporations, federal and state governments, and Indian reservations. Twenty-nine and six-tenths percent of the state's total area is administered by federal land management agencies (principally the BLM, Forest Service, and U.S. Fish and Wildlife Service) while state agencies and institutions administer six and five-tenths percent. Indian reservations constitute six and nine-tenths percent, and fifty-seven percent is privately owned and managed.[2]

This large percentage of what the general public considers to be "public domain land" leads many people to conclude that there could not possibly be a shortage of access to public recreational areas in Montana. Several factors, however, contribute to evidence of just such a problem.

Factors Contributing to Access Conflicts

First, the public sees these vast amounts of what it considers to be public domain that should be available for its use; in fact it is not. The term "public lands" is vague and undefined, and many of these lands are not by law or administrative policy open to the public for their general use. Examples of these closed lands include Indian reservations, institutional lands, and unconsolidated school trust lands. Yet the bulk of public lands (over 90% of the federal public domain) is, as a matter of public policy, open to recreational use.[3] This land theoretically open to public use is primarily administered by the BLM and the U.S. Forest Service.

The second factor contributing to the present access conflict is a lack of clear policy in public land management, both state and federal. In the case of federal land, "there is not now, and has never been, what properly could be called a comprehensive or integrated public land policy."[4] Over the years Congress has enacted many different pieces of legislation with regard to public lands, most of which are now obsolete and provide no firm basis for executive decision-making. In addition, administrative regulations frequently reflect this lack of standards and goals, contributing to decision-making on a case-by-case basis. This situation led to the creation of the Public Land Law Review Commission in 1967, which after three years of deliberations produced several volumes of information and recommendations. However, five years later, for various reasons, very few of these recommendations have been acted upon. Although attempts to formulate a public land policy have been made, no clear policy guides decisions today.

A similar situation exists in regard to state land management policy.[5] This lack of a comprehensive management policy for state lands also led to the establishment in 1967 of a committee similar to that of the federal PLLRC, the Committee to Study the Diversified Use of State Lands. Once again, few of the recommendations proposed by the committee for a better land management policy were acted upon.[6]

Thirdly, another factor contributing to the overall access and recreational use problem is that of fragmented ownership, both of federal and state land. Originally, public domain lands were intended to be disposed of under laws passed at various times by Congress. Most valley and stream bottom land passed into private ownership for farming, and mineral discoveries resulted in thousands of small mining claims. Grants of scattered sections of federal lands to states and "checkerboard" grants to railroads continued the increasing fragmentation along with withdrawal of large blocks of lands for national parks and national forests. Smaller blocks withdrawn for military reservations, power sites, and other special uses completed the process of scattered ownership.[7]

Dispersed ownership is one of the chief reasons cited as a cause of the closure of many state lands for recreation. The state forests, which are consolidated, are open to recreation as a matter of policy, while 5.5 million acres of Montana school trust land, primarily sections 16 and 36, are not.

A fourth factor in the access controversy is that of a rapidly increasing interest in outdoor recreation since World War II. New outdoor recreation activities, such as hiking, backpacking, snowmobiling, mountain climbing, and cross-country skiing, have increased the demand for access to the "wilderness experience".[8] Demand began to outstrip the supply of readily accessible lands as more and more sportsmen sought out remote and isolated parts of public land. In the past, the agricultural community had been the only major group with a strong interest in public lands, both state and federal. This fact led to the creation of an almost proprietary feeling on the part of farmers and stockmen -- an understandable feeling that "we were here first, and we should determine how the land is managed." These landowners, alarmed by the rapid increase in recreationists, began to restrict access to and across private lands. Some landowners took advantage of economic opportunities to charge fees for access privileges. Sportsmen justifiably complained that they were denied use of their public lands, while landowners justifiably complained of acts of vandalism and carelessness that caused the closure of access roads to the public land.

The Extent of the Problem

A fundamental question is "What is the extent of the problem in Montana?" Part of the controversy that surrounds the access

problem centers on the actual number of instances of road closures and blocked access. Are there only isolated but well-documented incidents or is the problem really pervasive? Magazine articles have directed nationwide attention to specific instances of closed access to public land in Montana.[9] Other states, a Congressional subcommittee, and the BLM have conducted extensive field studies showing a considerable number of acres of public land closed off to the public. A 1959 Colorado study concluded that 1.5 million acres of public lands (including 1 million acres of national forest lands) in that state were closed for free public access.[10] In that same year, an Oregon study determined that at least 500,000 acres of federal lands, highly valuable for hunting and fishing, were blocked in that state.[11]

A public hearing on access to public lands was held by the U.S. Senate Committee on Interior and Insular Affairs on October 9, 1959. It is frustrating to note that the testimony presented at that 1959 hearing was remarkably similar to the testimony of participants in this subcommittee's public hearing seventeen years later. Also in 1959, the BLM estimated that about 12.4 million acres of public domain lands lacked physical access (i.e., could not be reached easily by existing roads and trails) and that an additional 5.4 million acres in the eleven western states excluding Alaska were closed off by private landowners. (These lands were primarily those of the "checkerboard" category.)[13] Without similar sorts of field studies for Montana, determination of the extent of the problem is haphazard at best.

Despite the lack of exact statistics on access problems in Montana, it was assumed for purposes of discussion that the problem exists with sufficient magnitude to warrant further consideration. Although the subcommittee, through its deliberation, informally agreed that the problem exists but is perhaps not so pervasive as some suggest, it continued to study the background of the various public land management agencies' policies. Of particular interest to the subcommittee was the use of and access to school trust lands. Considerable time and research focused on school trust lands and the Department of State Land's management policies. The next section contains the body of that research.

History of the School Trust

As evidenced by the tendency of nearly all the participants in this study to concentrate of state lands, the recreational use of and access to state school trust lands is the most controversial of all the access questions. Although school trust lands make up only 5 percent of the state's total area compared to 29.6 percent federal land, their scattered locations cause them to be visible to many more potential recreationists. State lands (principally school trust lands) include over 5.25 million acres. These lands were granted to the state by the same act that granted statehood to Montana, the federal Enabling Act of 1889 (25 U.S. Statutes at Large 676). Congress granted to the state sections 16 and 36 of each township in the state, the proceeds from the sale or lease of which were to be used by the state to establish a permanent fund for the support of the common schools. The State Board of Land Commissioners, established in Article X, Section 4 of the state constitution, directs the State Land Commissioner and the Department of State Lands to administer state lands under procedures set forth by the legislature. In 1927 and in subsequent years, the legislature established the policy, set forth in 81-103, R.C.M. 1947, that:

> "The guiding rule and principle is that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and the board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. The board shall manage these lands under the multiple-use concept defined as: The management of all the various resources of the state lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources." (The multiple use concept was added in 1969.)

Thus state land must be managed in order to provide the largest reasonable short-term return to the state while maintaining the productivity and usefulness of the land over the long term. Recreational use of land is obviously authorized under this section, but the controversy that surrounds recreational use of state land arises from three basic conflicts. These problems, which were

considered by the subcommittee include:

1) Financial compensation of the school trust for recreational use -

   a) Must there be compensation?
   b) If so, how is it to be accomplished?

2) Liability of the lessees for potential damage done by recreationists -

   a) Will lessees refuse to accept this liability?
   b) Will lessees refuse to pay current rental fees or cancel their leases altogether?
   c) If recreational use is mandated, should the state assume some of the liability?

3) Access to state lands across private land, if recreational use is allowed -

   a) Will private landowners be required to provide access?
   b) If so, what means will be used?
   c) Will the landowner be compensated for this use of access?

These questions have needed resolution for many years, as evidenced by the existence of two previous major reports dealing with the subject. These reports are discussed below.

Related Studies

In 1967, another legislatively created committee was assigned the task of examining problems related to those to be considered by this committee. The Committee to Study the Diversified Use of State Lands was directed, under SJR 19 (1967), "to recommend such plans and programs as it determined necessary to provide for the overall use of state-owned lands for both public recreation and agricultural pursuits for the greatest benefit of the public in general."[19] Recreational use of public lands received considerable study by the committee. The questions: "Can lands, held in trust for the support of education be used either on a fee or free basis for public outdoor recreation?"; "How can conflicts between the public and lessees be resolved?"; and "How can damage to this resource be minimized?" are fundamental and were discussed at length.

In addressing the first question, the committee determined that recreational use of public land is justified by examining 81-103, R.C.M. 1947, which states that public lands and funds are held in trust for "the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state."

It is agreed that public recreation qualifies as a "worthy object helpful to the well-being of the people." There must, however, be effective management and protection of these lands by the state in order to minimize conflict among landowners, lessees, and recreationists. The committee also recommended amendment of section 81-423, R.C.M. 1947, to permit access to leased lands by the public for recreation and to give the authority to further regulate and protect these leased lands to the Board of Land Commissioners.

Coordinating access to private and public lands for recreation was also a concern of the committee. Several recommendations of the committee were: The Fish and Game Department should be instrumental in improving recreational administration of these lands so that more of them can be made available to the people for recreation; the Fish and Game's Information and Education Program and Field Law Enforcement Program should be fully developed to control fire, littering, and vandalism; access to leased lands across private lands should be allowed but carefully supervised to avoid conflicts among landowners, lessees, and the public; recreationists should seek permission from the landowner to use the land. It is interesting to note that these questions and recommendations remain unresolved by the legislature, courts, or Land Board.

Another previously conducted study on the subject of recreational use of state lands and access to them is entitled "Recreational Development of Montana State Lands," (1972) by William F. Corwin, a 1972 WICHE Intern assigned to the Department of State Lands.

The committee reviewed sections of the report containing a summary of surveys of other western states on the access question, alternative systems of recreational user fee schedules for compensating the school trust, and interviews with representatives of the various agricultural and recreationist groups. (See Appendix B.) The report attempts to answer the question of whether the public can have access to state lands for recreation without undermining revenue sources for the school trust fund. Mr. Corwin concludes that this goal can be accomplished, but only with increased management responsibility to the Land Board and a system of user fees.[20]

Both of these studies dealt at some length with the need for compensating the school trust fund for each use, and particularly for recreational use. The succeeding subsection presents arguments pro and con compensation and provides possible resolution of the question.

COMPENSATION OF THE SCHOOL TRUST

The question that arises whenever the recreational use of state land is proposed is the necessity of compensating the school trust for that use. Section 81-103, R.C.M. 1947, states that "the guiding rule and principle is that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state. . ." (my emphasis; see page 13 of this report for the full text). Since 1927 when the above section was enacted, the legislature has used this section as a basis for other policies reflecting the "other worthy objects principle," e.g., the Natural Areas Act of 1974, 81-2701 et seq., R.C.M. 1947) where compensation of the school trust is not required for certain public uses. There has been considerable controversy over whether such policies are a violation of the trust concept as set forth in the Enabling Act. The arguments for both sides of the issue are discussed below.

Arguments against the necessity of compensating the school trust for recreational use:

The Enabling Act of 1889, 25 Stat. 676, which granted statehood to Montana, North and South Dakota, and Washington also granted to the new states land to be used "for the support of the common schools". (Section 10 of the Enabling Act.) The Enabling Act establishes stringent guidelines for the "disposition" of school trust land or any interest in the land. When the school trust land is "disposed of", the Enabling Act mandates that the state receive "the full market value of the estate or interest disposed of." (Section 11 of the Enabling Act.)

The 1972 Montana Constitution also contains restrictions on the use of school trust land. In Article X, Section 3, the constitution provides that "(t)he public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion." Both the 1972 Constitution and the Enabling Act require that any proceeds from the disposition of these grant lands be applied to the common or public school fund. "Diversion" of school lands from the public school fund is prohibited by the state constitution.

The major question to be answered, then, is: "Does recreational use of school trust lands constitute a diversion of these lands from the trust or a disposition of the land or of an interest in the land?" The Enabling Act requires any sale or disposition of school trust lands to be at full market value. Recreational use of state lands certainly does not constitute a sale, nor can it be considered to be any other "disposition" within the legal definition of the word.

"Disposition", in public land law, generally refers to that final and irrevocable act by which rights of a person, purchaser, or grantee attach, and equitable rights become complete to receive legal title by patent or other appropriate mode of transfer; and until that act, the land is not disposed of. Assiniboine Sioux Tribes v. Nordwich 378 F. 2d 426, 429 (9th Cir., D.C. Mont.) Cert. den., 389 U.S. 1046.[21] The public use of state lands for recreation is not a conveyance of school trust lands, either to a private individual or to an agency of the state. If title to state lands were to be transferred to another state agency, the state would be required to compensate the trust for the full market value of the land. Lassen v. Arizona Highway Dept. 385 U.S. 458 (1967). However, if the public were to be allowed access to school trust lands for recreation, no title or interest would pass; the lands would remain under the control and jurisdiction of the Board of Land Commissioners, which has the responsibility for managing and protecting the lands to be used for recreation. Thus the Board would have full authority to close off specific areas under certain conditions, usually at the request of the lessee if recreational use would damage that parcel and diminish its value to the trust.

State lands used for recreation under guidelines to be set by the legislature and the Land Board would not be "diverted" from the trust in contravention of the 1972 Montana Constitution. Recreational use does not take lands that are currently income-producing out of the income stream. Existing land use would continue under the terms of the lease. Properly regulated, recreational use of state lands would involve no diminution of the income-producing capabilities of school lands that are now under lease; therefore no funds or income would be lost or diverted from the public school fund.

A loss to the trust would occur if school lands were sold for less than market value, or if they were given to another purpose, or if, as in a recent unreported Idaho case, title to the land has been passed to another state agency for recreation management.

In conclusion recreational use of state land under the legislative mandate of multiple use would not require compensation to the school trust, since no title to or interest in the land passes from the trust. Existing income-producing land uses under existing leases would continue, and thus no value would be disposed of to require compensation.

Arguments for the necessity of compensating the school trust for recreational use:

In answering the question: "May the federal or state government take school lands for public purposes other than the support of common schools without compensating the school trust?", it is necessary to consider several recent federal cases: Lassen v.

Arizona, supra., and a case that deals specifically with the Montana Enabling Act, U.S. v. 111.2 Acres, 293 F. Supp. 1042, aff'd on appeal, 435 F. 2d 561 (Ninth Cir., 1970). The decisions clearly state that the lands may not be granted away or given to any other governmental agency for another public purpose, nor may another governmental agency take the lands through condemnation proceedings without full compensation to the school trust. The lands in question are as much a part of the trust as are the funds and are no more subject to diversion for another purpose, no matter how worthwhile or necessary. Lassen v. Arizona, supra; U.S. v. 111.2 Acres, supra.

As in the previous argument, the central question is what constitutes a diversion of lands or funds from the purposes mandated by the Enabling Act. Court interpretations have held that anything is a diversion that inhibits or prevents the fulfillment of the purpose of the trust, which is to provide income for the schools. Ervien v. U.S., 251 U.S. 41 (1919). The proponents of this argument use as an example the same unreported Idaho case mentioned by the opponents of compensation for recreational use. The Idaho legislature realized the problem of diversion from purposes of the trust and decided to reimburse the school fund for the value of the land, the title of which was transferred to the other agency.

If the state wishes to change the purposes for which state lands may be used or the amount of compensation to which the trust is entitled for any transfer of land, there are only two methods that can be used to accomplish this goal. The legislature may petition Congress for permission to use the lands for other, non-income-producing purposes. Or, as to uses alone, the legislature may purchase the land or an interest in that land from the trust and use the land for any purpose, such as recreation, as it deems necessary or worthwhile.[22]

Under this argument, several statutes enacted by the legislature in dealing with state lands would appear to be in conflict with the Enabling Act. These would include the 1927 statute (81-103, R.C.M. 1947) stating that "these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state," and that the resources of state lands are to be utilized so as to "best meet the needs of the people and the beneficiaries of the trust." Other statutes in which the legislature and presumably the constitutional convention delegates sought to implement the multiple-use concept for state land may also be invalid. "This treatment of school lands appears to be within the scope of state discretion so long as each use that has value or that might produce damage to the land is compensated."[23] (Emphasis added.) But such a use may not be donated by the state to private persons, other state agencies, or to the people as a whole. Other statutes, e.g. the Natural Areas Act, and presumably any future statute allowing recreational use without compensation would also be in conflict with the Enabling Act.

Resolution of the Compensation Arguments

In an attempt to resolve this question, the Department of State Lands requested an opinion from Attorney General Woodahl, specifically on the validity of the Natural Areas Act. Although the opinion was directed to a certain statute, it could inferentially apply to all recreational use. The Department of State Lands, in its brief, supported the arguments for direct compensation of the trust. Attorney General Woodahl concurred and carried the argument even further. In his opinion (volume 36, number 93), Mr. Woodahl held:

> "So that the state will not commit a breach of trust under the Enabling Act and Montana Constitution, the state must actually compensate its school trust in money for the full appraised value of any school trust lands designated as or exchanged for natural areas pursuant to the Montana Natural Areas Act of 1974. Such compensation can only be avoided by securing the consent of Congress."

The impact of this opinion for recreational use and access to state lands is that in order for such use to occur, a fee system that would fully compensate the school trust at the "market value" of the use would need to be devised and implemented. Determining the value of the recreational and access rights to a parcel of state land would undoubtedly prove difficult. Alternatives for compensation of the school trust include lease of the recreational rights for each individual tract, a uniform user fee for each parcel, or a state lands recreation license to be issued similarly to fish and game licenses. The subcommittee discussed each of these alternatives; however, the members did not decide on any of them. The intricacies of each system had not been analyzed and a decision on any one of them would have been premature until a policy of whether state lands would in fact be used for recreation had been established.

Another resolution of the compensation issue, mentioned tangentially in the Attorney General's opinion, involves petitioning Congres to change the Enabling Act. In the specific case of Natural Areas, the Natural Areas Advisory Council decided to pursue this option. In a unanimous decision at its October 8, 1976 meeting, the Council adopted the following resolution:

> "The Governor's Natural Areas Advisory Council advises the Board of Land Commissioners to seek an amendment of the Enabling Act which will permit the designation of natural areas in accordance with the Montana Natural Areas Act of 1974 without requiring monetary compensation to the school trust fund for such designation."*

*The Land Board will act on this resolution at a public meeting November 15, 1976.

The subcommittee did not discuss this option because the members generally agreed that compensation for all uses was beneficial to the school trust. However, some individuals and sportsmen's groups think that uses beneficial to the public, such as recreation, should not require monetary compensation.

Thus the issue of compensation of the school trust is fundamental to the use of and access to state lands. Although the Department of State Lands takes a position favoring compensation, it presently does not require it since recreational use of a tract is determined by the current lessee. Any further policy regarding recreational use of state lands must take compensation into account.

In attempting to determine a future state lands recreational policy, the department is studying methods of deriving income from recreational use for the school trust. As a first step, the department is conducting a recreational inventory to determine which lands might be of value sufficient to generate income. The next section discusses this process.

As one method of alleviating the access problem as well as deriving income for the school trust, the Department of State Lands, in cooperation with the Department of Fish and Game and the U.S. Bureau of Outdoor Recreation, is nearing completion of a program to inventory selected school trust lands for their recreation potential. The project attempts to locate and describe state-owned trust lands that have recreational value and to rank these lands in terms of physical, aesthetic, and geographic characteristics important to recreation with the idea that they could be targeted for recreational use.

According to a summary provided by the Department to the subcommittee:

The value of state lands for their recreational development potential is determined by a systematic comparison of the resources comprising each parcel, to the resources identified on all evaluated parcels. Therefore, it is not possible to simply list the features which would be found on an "A", "B", or "C" parcel. The recreational rating is based on forty-three (43) evaluations of specific resources which would be valuable for recreation. These resources are grouped within the major categories of topography, vegetation, water, scenery, and a category termed "other complimentary factors". Each of the forty-three resources is valued on a rating scale of 0-5. An "A", "B", or "C" parcel is the product of all of these ratings. The number of possible associations of these resources and their respective ratings, which could characterize any given parcel, is 2.89 times 10^{33}.

Though the recreation evaluation system does not lend itself to a prompt identification of the resources that would characterize all "A", "B", or "C" parcels, a general profile of those parcels within each category resembles the following:

<u>"A" Parcels include:</u>

-lands with a variety of topographic features, including areas which could be easily developed, and which are readily accessible

-lands with a variety of vigorous vegetation, probably including forested areas

-land with a body of water of sufficient size to attract recreationists

-lands within reasonable proximity to a population center of greater than 10,000 residents

-lands near or adjacent to a major traffic route (as identified by the Highway Department)

-lands bearing evidence of past recreational use, or recreation may actually be occurring on the parcel

-lands without the presence of distracting environmental intrusions (i.e., interstate highways, transmission lines, and rail lines)

-lands including an aesthetically pleasing variety of resources

-lands that may be unique in comparison to surrounding lands

"B" Parcels include:

-various combinations of the above characteristics

-unforested areas

-lands that possess a stream or river, but not significant in size or in frontage, and that may be only locally popular for fishing

-lands with access limited to unimproved roads

-lands bearing evidence of prior recreational use, such as seasonal hunting camps

-lands having distracting environmental intrusions

-lands with appealing but not unusual scenery

"C" Parcels include:

-topographic variations limited to rolling hills or possibly very steep terrain with very limited useable area

-lands that may lack a forest or have only scattered trees. Vegetation probably limited to grass and shrubland species

-lands usually lack a body of water that would attract recreationists

-lands with access limited to heavy-duty vehicles, or vehicle access not established

-lands beyond a reasonable distance to expect frequent use from large population centers

-lands where environmental intrusions may be numerous

-lands that may be scenic but comparable to vast areas with similar features.

Of particular note is the fact that the criteria do not contain hunting values and reflect only limited fishing values. Ted

Schwinden, former State Lands Commissioner, explained that virtually all state lands were valuable for some form of hunting. For example, even the most desolate dryland would provide habitat for antelope or some game birds. Consequently some parcels that may be under particularly heavy pressure during hunting seasons would not necessarily receive a high rating. And it is during hunting seasons that the access problem occurs most acutely.

Despite the above limitations, the Department of State Lands provided the subcommittee with some useful and surprising statistical information related to the recreation inventory. A substantial portion (60%) of state lands were eliminated from the inventory altogether by reviewing aerial maps of the area. Of the inventoried parcels, 22 percent were classified "A"; 30.8 percent were classified "B"; 8.9 percent were classified "C+"; and 38.1 percent were classified "C". Thus only 4.1 percent, 5.77 percent, 1.65 percent, and 7.14 percent of the total state tracts were categorized as "A", "B", "C+", and "C" respectively.

Of those parcels found to have a relatively high recreation potential, 40.3 percent were readily accessible; 14.7 percent were accessible within 1/2 mile; 44.8 percent were accessible within 1 mile; and .4 percent were accessible beyond one mile. Thus lands high in developable recreation value were, on the whole, fairly accessible. For a more detailed description of accessibility of the inventoried land, see Tables I through V, Appendix C.

The subcommittee focused considerable attention on the recreation inventory and supported the concept of developing highly rated parcels for recreation as a means of opening more state lands to the public. At its final meeting, the subcommittee agreed to endorse the recreation inventory process and to encourage recreational use on high value parcels when it is compatible with other operations and when the school trust fund is compensated for that use.

Besides having an interest in developable recreational state land as described in the recreation inventory, the subcommittee wished to delve further into the possibilities and problems of recreation on all state tracts. In pursuit of this objective, the subcommittee directed the researcher to conduct a survey of state land lessees, the results of which are detailed in the next section.

SURVEY ANALYSIS

GEOGRAPHICALLY SELECTED LESSEES OF STATE TRUST LAND

At its first organizational meeting in April, the subcommittee quickly expressed its overriding concern for the potential effect that recreational use of state school trust lands would have on income produced from that trust. It was this interest that stimulated the eventual design and development of a questionnaire to be sent to selected state land lessees. (For a copy of the questionnaire, see Appendix D.) The subcommittee wanted to assess the impact of public recreational use of state land on the present lessee and to determine whether these lessees would continue to lease the land for equivalent rental fees should the state require recreational access. The subcommittee also felt that state land lessees represented a good cross-section of the agricultural community, since most of them owned their own land or leased from other sources and could therefore give a valid indication of the farmer's and rancher's ideas and problems with general recreational and hunting and fishing. The questionnaire, developed in cooperation with the staff of the Department of State Lands, was designed to determine the extent to which state lands in particular and all other lands in general were affected by public recreation.

In deciding which and how many lessees would receive questionnaires, the staff attempted to achieve geographical diversity among the 8,500 total surface lease parcels administered by the Department of State Lands. A fair representation of the various types of surface leases (grazing, timber, and cropland) was also sought, although the significant majority of parcels (approximately 6,000) are primarily grazing leases. Questionnaires were sent to 300 lessees of state land or to lessees of 3.5% of all state land parcels. (Because many lessees lease more than one tract of state land, the sample would be a significantly larger percentage of the total number of lessees; however, these exact statistics on the total number of lessees are not readily available from the Department of State Lands.) Of the 300 surveys, 50 were mailed to lessees of State Forest land, administered by the State Forester, and 250 were mailed to lessees of nonforest land administered by the Department of State Lands.

The content of the questionnaires was developed in draft form by the subcommittee staff. The subcommittee reviewed and amended the draft, and the final version was determined and approved at the September 16, 1975, meeting. The subcommittee exercised great care in choosing the questions to be asked and decided that the lessees would feel more free to respond fully to the questions if they were not required to identify themselves. Although many respondents chose to sign their returned questionnaires, no effort was made by the staff to identify particular responses to specific lessees. Although this procedure prevented an analysis of the returns by geographic area and negated the possibility of

identifying specific geographic problem areas, it may have contributed to the relatively high rate of response to the questionnaire.

The rate of the response to the questionnaire is significantly higher than can usually be expected from surveys conducted under similar circumstances. A 30 percent response is considered by social survey experts to be a good return.[24] But 168 questionnaires were answered and returned, a 56 percent response -- despite the inadvertent omission of a self-addressed stamped return envelope as promised in the cover letter accompanying the questionnaire. It is clear from this high response that the issue of recreational use of state land and all agricultural land is one of major importance to the state land lessee and to agricultural landowners. The results of the survey indicate that this issue affects landowners and lessees directly and economically. The questions were answered in depth and detail by many respondents, another indication of their concern for the subject of public access to and use of public and private agricultural land.

In tabulating the responses, the staff exercised special care to record all comments and responses verbatim. The committee expressed concern that the results of the questionnaire be analyzed straightforwardly in order that they not be misused. As a result of this concern, all comments are recorded as they were written in Appendix D, Exhibits A through E, though they were categorized in the body of the tabulated results. The subcommittee directed that they must approve the final survey analysis before its release to the public or to any interested public agency or group.

The remainder of this discussion is devoted to a brief description of each question and its results. The statistical information provided in the attached pages should be consulted with each question's analysis.

In question 1, which asked the respondents to identify the type of state lease they had, the response reflects the fact that the vast majority of state land is grazing land and that several lessees had more than one type of lease. The records of the Department of State Lands indicate that some leases are a combination of grazing and agricultural. The low response of timber lessees may indicate that they were not as concerned with the issue of recreation as other lessees; however, since most timbered areas are also used for grazing livestock, the lessees of forested areas may have checked the grazing category as their primary type of lease.

In asking if land was leased from other sources, question 2 was designed to provide a basis for comparison of the lessee's practices with regard to recreational use of his state lease to land he may own or lease from additional sources. A large percentage of the respondents did lease additional land, primarily

from the Bureau of Land Management, Forest Service, and private landowners. Many respondents leased from more than one lessor.

Question 3 asked the lessees if they allowed recreational use of their private land and if they required that permission be obtained before entering the land. The responses demonstrate that a large percentage of those responding to the questionnaire allow recreational use of their private land and that most prefer that permission be sought from them before recreationists enter their land. Several respondents to the second part of the question indicated that they would like sportsmen to ask permission but had not been successful in controlling use in this manner.

Questions 4 and 5 asked the same question of lessees of state and other leased land respectively. An even higher percentage of lessees stated in question 4 that they allow recreational use of their state-leased land. Fewer lessees require that permission be obtained by the public to use their leased land than their private land. Again, some lessees commented in question 4b that they would like recreationists to request permission but were unable to enforce this policy.

Question 5 provides some noteworthy information in that although again a substantial percentage of respondents said they allow recreational use of their BLM, Forest Service, or privately leased land, an extremely small amount of lessees thought that their lease required them to allow such use.

In fact, BLM and Forest Service leases stipulate that public recreational use be allowed under the multiple-use principal. Although 60.7 percent had BLM leases and 23 percent had Forest Service leases, both of which require that public recreational use (though not access across private land) be permitted, 73 percent of the lessees said they weren't so required in their lease. This inconsistency may demonstrate either a lack of knowledge about their lease or that the question was poorly worded and respondents thought the question referred to their state lease. A fairly large number of persons, relative to the response on other questions, 9.2 percent, did not respond to this question, again indicating a lack of knowledge of the provisions of their lease or confusion over the question itself.

Question 6, which queried the respondents on whether they charged a user or parking fee for the use of their private or leased land, indicates that only an extremely small number of lessees charge user or parking fees for the use of either their private or leased land. The amount charged by those that do require payment of a fee followed no clear pattern. Some lessees indicated that although they did not currently charge fees, they might be eventually forced to do so if damage and abuse of their property continued. (See particularly questions 7 and 13.)

In the seventh question, the lessees were asked to detail specific instances of damage by recreationists to their private or leased land. The question was left open to any type of response; however, the responses did follow a pattern and fell into the categories listed in the statistics presented for question 7 in the Appendix. The three most widely experienced instances of damages were: gates left open (41.6 percent), damage to crops and pasture due to off-road vehicle use (35.7 percent), and fences cut (29.7 percent). Littering and livestock killed were also common, (20.8 percent and 17.8 percent respectively) with numerous other problems mentioned in substantially smaller numbers. Many respondents answered with more than one type or instance of damage, and all but 2.3 percent had experienced some form of property damage.

Question 8, in asking lessees who close their land to recreationists to list their reasons for doing so, is somewhat similar to question 7 above, and 63 responses (or 37 percent of the total amount of respondents) were submitted, most of which fell into the same categories as those for question 7. Interestingly, despite the fact that only 33 people responded "no" to question 3a, and 23 responded "no" to question 4a, 63 people responded to this question as indicated that although they did not yet close their land, they might have to if abuses continued. The two most common reasons for closure or posting were general vandalism and lack of courtesy (12.5 percent) and damage to livestock (10.1 percent). Again, some respondents answered in more than one category.

Question 9 asked the lessees under what conditions mandatory recreational use permits on state land would be most acceptable. When asked to choose among four responses, the lessees responded overwhelmingly that relief from liability was most essential, with relief from management responsibilities, economic incentives, and user fees following in importance. Several people did not respond, and some indicated it would be totally unacceptable to them regardless of the circumstances. Other lessees responded in categories not provided directly in the question.

In responding to question 10, which asked who should manage recreational use of state lands, the majority of the lessees answering indicated that it was the lessee who is best able to manage the land for recreational use. Others felt the Department of State Lands or a cooperative arrangement between department and landowner would provide the best management; very few wanted the Department of Fish and Game to have a part in the land management.

When asked in question 11 if recreational use under proper management is compatible with their present operations, 32 percent responded an unqualified yes and 19 percent an unqualified no; however, most felt the need to qualify their response in some manner. Many expressed concern that the term "proper management" was difficult to define and that consequently the question was difficult to answer -- a concern expressed by the subcommittee

in its review of the questionnaire. The recurring categories of response are listed in the body of the statistical analysis and the verbatim responses in Appendix D, Exhibit B.

In response to the crucial question of allowing access across private land to reach state, BLM, or Forest Service land (question 12), the two most common categories of response were: 1) if the private landowner can control who crosses and how and where they cross his land (23 percent); and 2) if an established road to the public land already exists and people would stay on it (17 percent). Twenty-one percent did not respond at all, and some of the respondents answered in more than one category.

When asked in question 13 if they had considered supplementing their income with recreational development of their private land, most lessees responded that they hadn't and felt it would not be profitable or too much trouble to do so. Some speculated that they might have to if farming and ranching continued to be unprofitable.

When asked to provide additional comments, many lessees responded at length and with great interest in the overall access question. To generalize from these comments, most lessees are willing to work toward a compromise with sportsmen, providing some of their complaints and needs are met with a positive response by sportsmen and land management agencies. Many expressed a concern for their property rights as taxpayers. Most acknowledged that damage was caused by a minority of abusive sportsmen and expressed a desire to come to a workable solution to the access problem. The comments in Appendix D, Exhibit E, of the survey results are instructive and valuable if such a solution is to be reached.

The questionnaire as a whole should be used with care; however, it does provide a basis for determining some conditions that need to be met before public recreational use of agricultural land is made palatable to the state land lessee and to the agricultural community as a whole.

FISH AND GAME LANDS

Before moving on to discuss the legal status of public roads in Montana and legal remedies for obtaining access, this section presents a very brief discussion of Fish and Game land ownership and access site policies.

Access Site Policy

In order to increase public access areas for hunters, fishermen, and other recreationists, the Department of Fish and Game is attempting to buy land for additional access sites versus improving old sites with additional picnic tables, electrical facilities, and other items. The current emphasis is on purchasing fishing access sites instead of big game range and to buy these sites in areas where the stream is most accessible to the fisherman. The Department of Fish and Game has estimated that SB 13, (1975) which provides for the coal impact tax, will provide an additional 1.2 million dollars for acquisition of recreation areas.

The Fish and Game Department has worked with the Department of State Lands in trying to determine a workable system of compensating the school trust for recreational use of state lands for hunting and fishing; however, a satisfactory arrangement has not yet been agreed upon.

Statistics on Land Ownership

The Department of Fish and Game in "A Listing of Lands Controlled by the Montana Fish and Game Commission" (July, 1974) lists 10,647.63 acres of land purchased and 1,351.38 acres leased, to total 11,999.01 acres of land for public fishing access areas. A detailed summary of their holdings may be found in the above-mentioned report.

ACCESS ROADS IN MONTANA:

THEIR LEGAL STATUS AND REMEDIES FOR PUBLIC ACQUISITION

Legal Status of Access Roads in Montana

The inadequacy of accurate ownership records for public roads in Montana is one aspect of the access problem upon which all sides agree. The subcommittee asked for information about the authority of county commissioners over roads in various counties, the kinds of roads that exist in counties outside the state system, roads that may be open to the public but are on privately owned land, and questions about abandonment procedures. These areas of concern were voiced frequently throughout the meetings and public hearings held by the subcommittee.

Chapters 31 and 40 of Title 32 govern the opening and closing of county roads. County roads may be created either through a local improvement district mechanism or through a road district. In the first instance, the board of county commissioners may create the road upon receiving a petition signed by the owners of two-thirds of the linear feet fronting on the road. In the second case, the road is created upon receipt of a petition signed by any ten or a majority of the freeholders in a road district. A road district may include all or any part of a county. A local improvement district includes a strip of land five miles wide extending the length of the road and one mile beyond its end.

County roads may be abandoned only upon a petition for abandonment. The petition for abandonment must meet the same requirements as the petition for creation of a road in a road district, that is, be signed by any ten or a majority of the freeholders in a road district. No road is properly abandoned until the board abandons it upon petition after a hearing or until a court orders abandonment.

According to the definitions in Title 32, county roads are public highways "opened, established, constructed, maintained, abandoned, or discontinued" by boards of county commissioners as authorized above. Furthermore, public highways are defined to be public ways for vehicular travel. The one exception to this is the stock lane which is a county road established for the driving and travel of livestock. Thus, under the present law there is some question whether a county road can be permanently closed for nonvehicular travel.

Several of the proposals of the State Commission on Local Government would change some of the provisions outlined above. County commissioners will be able to act on their own authority to open, close, or abandon a road instead of having to react only to a petition. A new term, trafficway, will be introduced to indicate a public way for vehicular, pedestrian, livestock, or other traffic.

In addition, the proposal, if enacted, will require counties to develop and maintain a current inventory of all roads under their jurisdiction including the ownership status of those roads. Such an inventory should help to clarify questions about the legal status of many roads throughout the state. Although current law also requires county commissioners to "survey, view, lay out, record, open, work, and maintain county roads . . ." (32-2801) and gives them discretionary power to maintain a plat book with full descriptions of county roads (32-2803), these records are inaccurate or nonexistent in most counties.

In the next section appear the remedies for declaring roads open to the public. The subcommittee hoped through this research to determine whether, in fact, these legal avenues were sufficient recourse for the person attempting to gain access.

REMEDIES FOR PUBLIC ACQUISITION OF ACCESS ROADS

What are the legal remedies available to the person or to the public wishing to gain access to public land? A person seeking such access who has no practicable route except over the lands of another must in some way establish that he has a right to use private lands to reach the public land. This can be accomplished either by petitioning the county commissioners to establish a road (Title 32, Chapter 40, R.C.M. 1947), if the person is a free-holder in the road district, or through establishing in the courts that an easement across the private land exists.

An easement is broadly defined as a right one person has in land of another.[25] It is considered to be a burden upon one party, and as such it is not taken lightly by the courts.[26] Easements pass or do not pass with title to the land, depending on their type. Easements are property in the form of an incorporeal right with an interest in land and may be classified as either private or public depending on the user.[27]

Easements are established in one of three ways: easement by express written grant; easement by necessity; and easement by prescription.

Easement by Express Written Grant

This type of easement involves permission to use the property of another as directed by a written contract. The easement is permanent as long as the recipient abides by the terms of the contract, does not release the grantor from the terms of the grant, or if the easement is not invalidated by merger of ownership of the land upon which the easement was established and of the ownership of the easement itself. A properly executed and recorded easement by express written grant is usually not contested in court. Though an important form of easement between two parties and the public, this type of easement does not represent the primary area of difficulty insofar as trespass and access problems are concerned.[28]

Easements by Implication or Necessity

Generally, this type of easement arises when a person or governmental unit conveys a portion of his land in such a way that it is impossible to reach the portion conveyed without crossing the part retained or vice versa. Since it would be impossible to use the land conveyed (or retained), the law finds an easement based on the presumed or implied intent of the parties to the conveyance.[29] This type of easement is by nature one of the highly contested forms of easement. The "way of necessity" is of common law origin and is supported by the rules of sound public

policy that lands should not be made unfit for use. As it applies to public and private lands, the fact that all of the land was originally part of the public domain and owned by a common grantor (the state or federal government) does not contradict the basic principles of way of necessity.[30]

The question "Can an easement by necessity exist where public lands are involved?" is fundamental. In Montana, case law strongly suggests that it can. In Herrin v. Sieben, 46 Mont. 226 (1912), the defendant, Sieben, was charged with civil trespass upon the lands of Herrin, the plaintiff, in proceeding to enclosed federal lands. In deciding for the defendant, the court declared a way of necessity for public purposes:

> "The grant by the federal government to the railroad company, so far as the question at issue is concerned, does not differ from a grant by one private person to another. It is impossible to gain access to the even-numbered sections belonging to the government except by going over some portion of the odd sections. (6) It must follow that there is an implied reservation by the federal government of a way of necessity, not only in favor of the government itself for access to these sections for any use to which it may wish to devote them, but also in favor of the private citizens who wish to go upon them for the purpose of making settlements thereon, or to cut timber when they may lawfully do so, or to explore them for mineral deposits, or, finally, to use them for grazing purposes." P. 235

Although Herrin v. Sieben, supra, was subsequently overruled by Simonson v. McDonald, 131 Mont. 494, (1957), another more recent case, Thisted v. Country Club Tower Corp., 146 Mont. 87 (1965), specifically overruled Simonson. Thus, the Herrin v. Sieben case stands.

In another case, Komposh v. Powers, 75 Mont. 493 (1926), the defendant appealed all the way to the U.S. Supreme Court for the decision against him. The court found for the plaintiff, citing that a way of necessity "did not mean an absolute and indispensable necessity by reasonable requisite and proper for the accomplishment of the end view under the particular circumstances of the case." The plaintiff, in this situation, had been using an existing road across the property of the defendant. The defendant had attempted to terminate the use of the road by the plaintiff.

In Herrin v. Sutherland, 74 Mont. 587 (1925), although Sutherland was found to have trespassed on Herrin's land, the court stated that the public had the right to hunt and fish on public domain, but must ask the landowner of land surrounding the public domain for permission to cross. Sutherland did not request permission. However, the court indicated that if permission had been requested

and denied, there existed a right by necessity to cross. However, as one study points out, if a person selects a route himself without the protection of a specific court ruling in his favor, he can be endangered by 94-3-104, R.C.M. 1947, which provides for defense of real property by force to the extent that death or serious bodily harm will not result.[31] Therefore, way of necessity from all apparent considerations must be established by case-by-case litigation and as such is a costly, time-consuming means to establish rights of access to public lands over private land. Easement by necessity also has little real application as most federal lands can be reached by some route, no matter how distant or inconvenient. Easements by necessity are just that and not easements for convenience. Ewan v. Stenberg, 32 St. Reptr. 864 (August 21, 1975).

Easements by Prescription

Easement by prescription, as applicable in Montana law, is analogous to adverse possession.[32] The distinction between the two is that the doctrine of prescription has reference to the acquisition of a nonpossessory interest in land whereas the doctrine of adverse possession relates to the acquisition of a possessory interest. An easement is a right to pass over land possessed by another; therefore, the doctrine of prescription applies. It is well established that, barring other issues, the public can obtain a roadway by prescription in Montana. (Brannon v. Lewis and Clark County, 143 Mont. 200.)

The elements for proof of the existence of a prescriptive easement have developed over a long period of time and have incorporated applicable portions of the doctrine of adverse possession. To establish a roadway by prescription, it must be proven that the public "pursued a definite, fixed course, continuously and uninterruptedly, and coupled that with an assumption of control and right of use adversely and under claim of color of right, and not merely by the owner's permission, over it for the statutory period . . . ." (Brannon v. Lewis and Clark Co. 143 Mont. 200, 203). Section 93-2507, R.C.M. 1947, establishes five years as the statutory period in Montana.

An easement by prescription can be established when the land of another is used overtly and continuously with the owner's knowledge but without his consent for the specified five-year period of time. In Scott v. Weinheimer, 140 Mont. 544 (1962), the court stated: "the party so claiming must show open, notorious, exclusive, adverse, continuous and uninterrupted use of the easement claimed for the full statutory period." Two additional Montana cases, Lackey v. City of Bozeman, 42 Mont. 387 (1910), and Stetson v. Youngquist, 76 Mont. 600 (1926), found that plaintiffs had fulfilled requirements for an easement by prescription. The former case involved an easement for public use.

To establish the right then, there must be a relatively continuous use, that is, a use whenever necessary, and an assumption of control adverse to the interests of the owner of the land. How does this apply to the public acquisition of an interest? In State v. Auchard, 22 Mont. 14 (1898), the court said that to show a road is a public highway, it would be necessary to show it had been used and traveled by the public generally as a highway and treated or kept in repair by the local authorities whose duty it is to open and keep public roads in repair. This opinion stems from the court's interpretation of an 1895 legislative act, which said that no route of travel over another's land would become public merely through the adverse right of use by the public. Either the county or the owner of the land must have declared the way public. In Barnard Realty v. City of Butte, 48 Mont. 102 (1913), the court held that action by the public agencies having jurisdiction over a road, such as maintenance, could be tantamount to such a declaration and thus the road could become public. The 1895 legislative act has been maintained and now appears in Section 32-2203 (26)(d), R.C.M. 1947.

One of the most striking cases on this subject is Kostbade v. Metier, 150 Mont. 139 (1967). In this case, it was proven that the public had used this road to gain access from an established public highway to federal land openly for more than fifty years without permission from land owners. In fact, the previous landowners had considered the road to be a public one. Assumption of control was proven by the fact that witnesses from the county indicated that public funds had been expended for 24 years to maintain the road. Thus the court's requirement that "the defendants must show that the public followed a definite course continuously and uninterruptedly for the prescribed statutory period together with an assumption of control adverse to the owner" were met. In this case, the county commissioners initiated the action.

The remaining question then is, what is the status of roads that have been open to the public for some years but where it cannot be shown that the road has been adopted as a public road by county authorities? Roads of this type have been described in cases in Montana and a number of other states. An Arizona court said that ". . . .many if not a majority of the roads . . . . running throughout all parts of the territory, and frequently in general public use are neither public highways nor private ways, but simply roads established without authority for the convenience of individuals and without a legal status either as public highways or private ways." (Territory v. Richardson, 8 Ariz. 336, 76 P 456 at 457.) Roads over which there is neither a public nor private easement thus fall into this category and the person who owns the land can control the road. This was discussed in relationship to Montana in State ex. rel. Dansie v. Nolan, 58 Mont. 167, 191 P 150.

So there are roads that may be used by the public but are not

public roads. Because it is necessary to show assumption of control by the county to prove a prescriptive easement, a situation where the public would prove such an easement or its right to use a road against the will of a county is unlikely. Thus the status of and public remedies for opening public access roads must be determined on a case-by-case basis through litigation and at considerable expense with the concurrence of county commissioners. For the public, this is a cumbersome and frustrating process. For the majority of landowners, it is a justifiably cautious and fair situation.

Following their consideration of the research materials appearing in the preceding pages, the subcommittee planned a public hearing. The members hoped to use the research as background for the hearing testimony, an analysis of which appears in the following section.

MAY 15 HEARING TESTIMONY

The subcommittee held a public hearing in Lewistown on May 15th in order to provide an opportunity for various interests to contribute to the study. In holding the hearing, the subcommittee hoped to move beyond the usual acrimonious debates to a constructive forum for various ideas and solutions.

In preparation for the May 15 public hearing in Lewistown, the subcommittee mailed to interested persons a memorandum summarizing the progress of the study to date and outlining the information needed from hearing participants (see Appendix F). For purposes of describing the testimony received at the hearing, the outline below will be used as a framework. Participants responded to those subjects marked below, and an additional topic was added as a result of the hearing. Many of the people attending the hearing responded to the question: "What is the general problem?" and this subject area will be discussed first, followed by the remaining categories in the outline.

I. What is the general problem?

II. What is the extent of the access problem?

- A. Where is public access to public land being denied?
- B. Is access being denied to any particular group (e.g., out-of-state hunters, motorcyclists, etc.)?
- C. Is public access denied at any particular time of year?
- D. Are access fees charged?
  1. Under what circumstances?
  2. By whom?
- E. Is good access information (e.g., maps) a problem?

III. What are specific problems the landowner has?

- A. Does any particular group cause special property damage?
- B. Why do landowners close their land?
- C. Do landowners want existing public access roads to public lands closed or abandoned and if so, why?

IV. What are some specific possible solutions to the problem?

A. What kind of access is needed? For all vehicles, horses, snowmobiles, or pedestrians?

B. If counties find it too expensive to maintain roads, will maintaining right-of-way be sufficient?

C. How can the landowner-sportsmen conflict be resolved? How can both groups progress beyond the accusation stage to good solutions?

D. What are you and your group willing to do to help improve the bad effects of open access/closed access?

E. What do the land management agencies need to do to improve the access situation (BLM, Forest Service, Fish and Game, Department of State Lands)?

F. What would you like to see this subcommittee and the legislature do to resolve this conflict?

The responses to the question "What is the general problem" can be divided into three groups: those of the farmer-rancher-landowner; those of the sportsmen; and those of the public land managers. For the landowner, reactions to the problem were mixed.

The Landowners

Mons Teigen, Executive Vice President of the Montana Stockgrowers' Association, asserts that the access problem is more apparent than real, and to the extent that a problem does exist, it is caused by the increasing numbers of people wanting to gain access throughout the year for numerous types of recreation besides hunting and fishing. For the landowner who feels he has been a steward of the land and its wildlife, the problem is very real, the issue being that of public v. private property with a properly executed lease being an increment of private property, according to Representative Ed Lien of McCone County. Private landholders are very concerned about their commitment to property rights and responsibilities. Norman K. Starr of Big Timber expressed the feeling of many ranchers when he stated that ". . . recreationists and others want to use the state lands for nothing." Lessees of public land feel that recreationists should also pay for the use of the land. For the landowners, access without responsibility is seen as a danger to the land's values for both agricultural and recreational use. William T. Harrer of Choteau County summarized the rancher's plight when he described this scene: "on unsupervised public access areas can be seen pickup trails that erode gullies, potholes dug for prospecting, trash laying about and even shacks and old car bodies."

The Sportsmen

The sportsmen who testified at the hearing indicated that the problem lay not only with the uncooperative landowner but with land management agencies and other public bodies that were unresponsive to their and the public's needs. Harry McNeal of the Montana Wildlife Federation stated that most of the problem is getting public access to the exterior boundary of public land. As Neil Travis of Trout Unlimited affirmed, it does the fisherman "precious little good if just across a field runs the best trout stream in the nation if that field is privately owned and access is denied by that landowner." Hap Kramlich of the Lewistown Rod and Gun Club spoke for sportsmen who are critical of government officials when he said that there is an access problem in Montana often related to the fact that many times public officials have welcomed road closures to reduce costs and workloads. Efforts to reopen closed roads are hampered by poor records and official apathy. Theodore Perrine, a rancher and sportsman from Judith Gap, echoed these sentiments and amplified them in stronger terms when he stated that the Forest Service, logging industry, and many ranchers prefer to treat federal public land as a private preserve, being frightfully remiss in their obligation to the public.

The Public Land Manager

In trying to balance these two conflicting sides of the issue, the public land manager is also attempting to achieve proper land use by all these interests. The problem on state lands, according to Leo Berry, Acting Commissioner of State Lands, is one of management of 5.5 million acres of land scattered throughout the state on every sixteenth and thirty-second section. The state must receive compensation for each use and maintain the high quality of the resource. Ed Zaidlicz of the Bureau of Land Management expressed the problem from his point of view in stating that the public does not have legal access to national resource lands unless those lands can be reached from a public thoroughfare. Where private land must be crossed, the public's right to use national resource lands is restricted. Some lands are being closed by owners who wish to charge fees for crossing them. Thus, public lands are in some places becoming like private game preserves. Mr. Zaidlicz focused on a problem that everyone agrees needs resolution: the unknown legal status of thousands of miles of roads and trails in Montana. Until Montana's counties formalize the ownership of their roads and trails, the ability to develop legal access will be seriously impaired. From Mr. Zaidlicz's specific case, the BLM is not treated as a freeholder of property in some counties in proceedings to abandon county roads. In many instances, abandoned roads constitute the only means of access to large blocks of national resource lands, and the BLM rarely has an opportunity to protest the prospective abandonment.

The May 15 hearing demonstrated the complex and many-sided nature of the general public access problem. In responding to the second question on the hearing outline: "What is the extent of the access problem?", the participants spoke to questions IIA and IIE. In question IIA, the subcommittee asked for specific instances of denial of public access to public land. Two people responded with these particular situations:

(1a) D. Roscoe Nickerson, Skyline Sportmen's Association; the road leading from I-15 near Melrose to Brown's Lake in Beaverhead County had been open for over forty years and has recently been closed by a private landowner. The lake is owned by the Fish and Game Department and surrounding the lake is United States Forest Service land.

(1b) A road along Thompson Creek in Beaverhead County has recently been closed.

(2a) Theodore D. Perrine, Judith Gap; the problem is of particular importance in the western part of the state such as the west side of the Bitterroot Valley where the terrain is such that any practical access to the canyons is precluded unless right-of-way across private land is obtained. As long ago as 1958 private access roads were barred by locked gates in this area.

(2b) The entrance to Sweetgrass Canyon in the Crazy Mountains is blocked to public access.

Only one person addressed the question of good access information, e.g., maps. Ned A. Summers, Carter County Sheep and Cattle Growers Association, stated that maps often show details that are not visible on the ground. These may include trails that are mere cowpaths. It may also be that public land boundaries are not marked on the ground and thus are hard to distinguish.

Question III of the outline asked: "What are specific problems the landowner has?" Many landowners responded to the subquestion of which particular groups cause special property damage. (Question IIIa.) From the testimony came the conclusion that motorized vehicles are the source of most of the property damage landowners experience. Mons Teigen asserted that certain types of recreational use pose more of a problem than others. Off-road vehicle use on moist or fragile soil creates real erosion problems. In addition, in their effort to recover antique bottles, etc., some people will undermine structures. He complimented the fishermen, saying that they pose less of a problem to the environment than most other persons. Mrs. A.B. Cobb, Jr. of Augusta, however, stated that in spite of the common idea that only ten percent of the people do the damage in her county, one observer of twenty-five years said that perhaps one percent are all right and the other ninety-nine percent do damage. He complained of roads made by vehicles, fences out, steep hills gouged

by four-wheel drives, and missing cattle. He pointed out that one vehicle driving eight miles on pastures destroys one acre of grass. Rossman and Kenneth L. Perry reiterated the assertion that two, six-inch tire tracks smash or break off an acre of rangeland grass, or 43,560 square feet in somewhat over eight miles of driving.* Again, motor vehicles appeared as the culprits in Ned Summers' testimony. He maintained that in some counties, hunters and others who want to use areas in all types of weather do terrible damage to dirt roads. Limited funds cause the roads to exist unrepaired for lengthy periods. William Bickle of the South Eastern Montana Livestock Association, Ismay, singled out motorcyclists because their noise disturbs livestock and their trails lead to erosion. Snowmobiles also cause too much noise, and livestock follow them hoping to get fed.

Question IIIb asked: "Why do landowners close their land?" The responses to this question coincided with those to the preceding question. Ned Summers cited destruction of grazing land as the primary reason for closure. Vehicles driven across the range destroy much grass for cattle. He cited a "Recreationist's Unit of Destruction" as 10,000 square feet destroyed by a vehicle. According to William Bickle, landowners close their lands to help keep livestock quiet. Cattle, whether newly weaned or ready for market, must not be disturbed for maximum productivity. Bad experiences are common enough for landowners to close their land. One rancher has experienced horses let out, pelts of trapped animals destroyed, rustling using hunting as a cover, a horse frightened into a fence and injured, a bull killed, and cattle mixed. Ned Summers echoed these sentiments. Landowners close their land because they haven't time to police the few hard core who ignore rules of courtesy through ignorance or malice, according to Hector E. Rodgers of the Stillwater County Agricultural Legislative Association. Thus, motor vehicles and general thoughtlessness on the part of sportsmen contribute significantly to the closure of private land and blocking of public land access.

The final and most important question asked by the subcommittee was "What are some specific possible solutions to the problem?" This larger question was divided into subtopics, the first of which was: "What kind of access is needed? For all vehicles,

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*Attempts to verify these statements were made by the researcher, who contacted Carl Wambolt, Range Specialist, Agricultural Extension Service on June 2, 1976. According to Mr. Wambolt, the information about how much grass is destroyed by a wheeled vehicle comes from a newsletter out of Canada. The variability of this type of situation is so great depending on vegetation types and ages, soil types and condition, moisture conditions, relief, etc. that it would be impossible to generalize. In addition, he said he knew of no studies that tried to quantify this kind of information because it is so complex.

horses, snowmobiles, or pedestrian travel?" Only two people, both sportsmen, spoke directly to question IVA. One was Hap Kramlich, who said that reasonable access must be provided to public land. The access may be any such as a designated road, footpath, trail, or snowmobile route depending on distance, terrain, land use, and time of year. Access should be complementary to off-road vehicle regulations. The other, D. Roscoe Nickerson, stated that fishing streams that can be entered from public land should be open for angling between high water marks.

Hearing participants also responded to sub-question IVE. "What do the land management agencies need to do to improve the access situation (BLM, Forest Service, Fish and Game, Department of State Lands)?" Harry McNeal of the Montana Wildlife Federation said that the land management agency has the right and obligation to regulate human impact resulting from concentrated use. One proposal for the Department of Fish and Game was presented by Glen C. Childers. He suggested that the department spend 1/2 million dollars on an educational program instead of spending millions of dollars taking agricultural lands out of production. He felt that the only solution needed is development of understanding through an educational program. William Bickle, in a similar vein, suggested that the Department of Fish and Game should meet with landowner groups to tailor hunting seasons to their needs. He also suggested that a system of quotas may have to be devised if deer populations continue to decline. Kenneth Rosman and Kenneth Perry both maintained that land management agencies designate certain sites for recreational use and then police them adequately to prevent damage to the environment. Such policing is essential where humans in numbers trespass on native areas because there is little regard among people for property other than their own. Ed Zaidlicz of BLM also suggested that as the access problem is further resolved, some areas should possibly be closed to achieve more efficient management, to protect fragile areas, or to protect a threatened wildlife species. Several people suggested the establishment of more areas similar to the Square Butte Management Area in Judith Basin County near the Highwood Mountains. Mons Teigen affirmed that such management areas promise to exert control over the land while providing valuable recreational opportunities. The project is a joint effort by the private landowners, Fish and Game, and Forest Service.

Lastly, the subcommittee asked: "What would you like to see this subcommittee and the legislature do to resolve this conflict?" An excellent response was made to this question, with suggestions ranging over the entire spectrum of options.

For purposes of organization, the proposed solutions are divided into three groups: (1) those favoring strict limits to public access; (2) those favoring open public access; and (3) public land managers' proposals.

In the first group, or those who support strict limits on free public access, the following legislative solutions were proposed:

(a) Representative Ed Lien of McCone County indirectly advocated some type of fee system for recreational use when he said: "Perhaps all Montana citizens should prepare themselves for the coming day when free outdoor recreation access will go the way of the free grass era of the old west."

(b) Norman K. Starr of Big Timber suggested that the Department of State Lands could establish a monetary value for the recreational potential of state lands. The current lessee for agricultural purposes could be given first option for lease of the recreation rights. If that lessee does not lease the rights, then it may be leased by the Department of Fish and Game or other person for the same price. The lessee of the recreation right would be responsible for proper management of the land for litter and garbage control, soil erosion associated with recreational use, providing sanitary facilities, protecting against trespass and damage to adjoining lands. Provisions should be made for compensating the state and other users when damages occur.

(c) R.E. Saunders of White Sulphur Springs proposed that before a solution to the access problem is devised, there should be a decision as to whether uncontrolled use of school trust lands by the general public is in the best interests of the trust under which the lands are held, if limited non-paying use is warranted, or if controlled fee or another basis is realistic.

(d) C.E. Lucas, Chouteau County Livestock Protection Association of Highwood, Montana had the following suggestions:

(1) If landowners are liable for recreationists, legislation should be passed to clear the landowner of that liability.

(2) Broaden off-road vehicle use laws to include all recreationists, not just hunters.

(3) Expand on Square Butte Management Area concept.

(4) Put more law enforcement in the field during hunting season.

(5) Do not pass more forced access legislation.

(e) William Bickle of the South Eastern Montana Livestock Association, Ismay, proposed limiting motorcycles and snowmobiles to specific areas or to areas where livestock are not being pastured. Vehicles should be limited to well-traveled roads and trails with further access on foot or horseback. In wet weather, vehicles should be confined to surfaced roads only because ruts remain for a long time causing erosion in steep areas.

Ranchers should be allowed to close off some federal land if comparable land is left open. No hunting should be allowed on private land without permission of the landowner. Penalties for violations should be loss of hunting license for that year, the following year, and a fine. There should be a stiff fine if hunting is not involved.

(f) Ned Summers of Carter County suggested caution in legislation providing access through private lands. Solutions suiting special needs and circumstances are warranted.

(g) The South Western Cattlemen's Association proposed that a study be made of long term effects of broadening access laws on landowners and the public. Cost estimates should also be developed.

(h) Glen C. Childers of Brusett advocated reconstituting the Fish and Game Commission so that at least two commissioners are landowners in the agricultural business.

(i) William T. Harrer of Fort Benton suggested that the problem of damage resulting from unsupervised public access to public lands may be most feasibly solved by supervision by the land lessee. Eventually a system of supervision of recreational uses paid for by the users should be devised.

(j) Mons Teigen supported more developments like the Square Butte Management area but felt those possibilities were limited because of too few wardens. He advocated legislative mandate of more wardens to cut down on landowner-sportsman confrontations.

(k) The Phillips County Livestock Association recommended no special legislation with regard to public access.

II

The second group, those favoring open public access to public lands, made the following proposals:

(a) Hap Kramlich of the Lewistown Rod and Gun Club, stated that legislation should provide reasonable guidelines for public officials and private citizens to follow in their efforts to gain reasonable access.

(b) The Montana Wildlife Federation and the Gallatin Sportsmen's Association advocate these proposals:

> (1) Prohibit closing any existing county road that leads to public land and water. Add flexibility so road could be closed for resource protection or transferred to another agency for maintenance of the right-of-way.

(2) Mandate counties to provide maps of legal roads in the county, at cost.

(3) Mandate counties to provide public right-of-way along section boundaries to public land and water.

(4) Make all waters public thoroughfare for recreation.

(5) Make legal provisions for hunting and fishing use of state lease lands.

(c) Neil M. Travis, Livingston, of Trout Unlimited supported the Fish and Game Program for obtaining access and wants the legislature to maintain and upgrade the program.

III

Land managers make up the third group of hearing participants. The only agency representative who proposed specific solutions was Edwin Zaidlicz of the Bureau of Land Management. His suggestions included:

(a) Every effort should be made by local, state, and federal governments to work together to assure that roads are identified and existing roads to public lands are not closed.

(b) The BLM wants state and local governments to help provide a stable system of public roads from which to develop a system of access easements to BLM lands throughout the state.

(c) County road abandonments have been protested by BLM but with little success. A remedy to this situation must include an appeal procedure as no such procedure exists. The BLM wishes to be treated as any other freeholder of property with its attendant rights and responsibilities.

Clearly many thoughtful proposals for solutions to the access problem arose from the public hearing. Most of the subcommittee felt that the hearing was a valuable tool in its study of the public access question, although some felt it was a bit one-sided. Eighty-eight interested persons registered at the hearing, indicating considerable interest in the issue, particularly among the agricultural community. Full hearing testimony and exhibits appear in Appendix G.

The public hearing participants' testimony presented the subcommittee with essential information with which to evaluate the access problem. Three additional areas needing research arose from the hearing and are discussed briefly on pages 57 through 60.

POSSIBLE OPTIONS/SOLUTIONS

OFFERED AT MAY 15th PUBLIC HEARING

The following list is as diverse as the various people involved in the access controversy. Some suggestions are within the realm of possibility, others are not.

1. Provide reasonable public access to public land of varying types for varying conditions. Such access should be complementary to off-road vehicle regulations.

2. Open fishing streams that are accessible through public land to angling between high water marks.

3. Make more land and water available to the public and correspondingly regulate human impact on the land and water resulting from concentrated use.

4. Require Department of Fish and Game to spend 1/2 million dollars on educational programs for landowners and sportsmen instead of spending millions more on land acquisition.

5. a. Require Department of Fish and Game to meet with landowners to set seasons according to their needs.

   b. Devise a quota system to stop the dwindling of deer population.

6. Require land management agencies to designate only certain sites for recreational use and adequately police them to prevent damage to the resource.

7. Authorize or require land managers to close some areas to achieve more efficient management, to protect fragile areas, or to protect a threatened wildlife species.

8. Establish more areas like the Square Butte Management Area that involve private landowners, sportsmen, and land management agencies.

9. Devise a fee system for recreational use of public land.

10. For school trust lands, devise a system for the lease of recreation rights. Give first option to agricultural lessee. Recreational lessee is responsible for maintenance and damages.

11. Make a decision on the wisdom of opening school trust lands to uncontrolled public use. Or decide if limited nonpaying use or controlled fee is realistic.

12. a. Remove liability of landowners for recreationists.

b. Broaden off-road vehicles use laws to include all recreationists.

c. Put more law enforcement personnel in the field during hunting season.

d. Do not pass more forced access legislation.

13. a. Limit use of motorcycles and snowmobiles to specific areas.

b. Allow ranchers to close off some federal land if comparable land is left open.

c. Allow no hunting on private land without permission of landowner.

d. Provide penalties for violations such as loss of hunting licenses for that year, the following year, and a fine. There should be a stiff fine if hunting is not involved.

14. Study long term effects of broadening public access on landowners and the public. Develop cost estimates of various programs.

15. Reorganize the Fish and Game Commission to include at least two landowners deriving their major source of income from agriculture.

16. Devise a system of supervision of recreational uses of public land paid by the users.

17. Demand that more wardens be placed in the field to help minimize landowner-sportsman conflicts.

18. Do not enact any special legislation with regard to public access.

19. Provide reasonable guidelines for public officials and private citizens to follow in their efforts to gain reasonable access.

20. a. Prohibit closing any existing county road that leads to public land and water. Add flexibility so roads could be closed for resource protection or transferred to another agency for maintenance of the right-of-way.

b. Mandate counties to provide maps of all legal roads in the county, at cost to the public.

c. Mandate counties to provide public right-of-way along section boundaries to public land and water.

d. Make all waters public thoroughfare for recreation.

e. Make legal provisions for hunting and fishing use of state lease lands.

21. Maintain Fish and Game program for obtaining access for the public. Upgrade the existing program.

22. Provide a stable system of roads from which to develop a system of access easements to BLM lands throughout the state.

23. Provide an appeal procedure to county road abandonment and recognize the BLM as a freeholder of property with attendant rights and responsibilities.

24. Do nothing. To do nothing is always an alternative.

MISCELLANEOUS

POST-HEARING RESEARCH

As the result of testimony presented at the public hearing in Lewistown, the subcommittee wanted to follow up on several areas of concern. The following short discussions are included in this section:

(1) An outline of the Square Butte Management Area program and similar concepts.

(2) A short description of the exchange policy of the Department of State Lands; and

(3) A short discussion of the limited landowner liability statute.

Special Management Areas

Many of the subcommittee members and hearing participants agreed on the value of special management areas for better landowner-sportsman relations. The first such area was the Square Butte Management area in Chouteau and Judith Basin Counties near the Highwood Mountains, which has successfully operated for the past four hunting seasons. The concept involves a cooperative agreement among landowners, public land management agencies, the Department of Fish and Game, and sportsmen. Basically, a specific area is designated and special parking, camping, and safety zones are established. Vehicles may be operated only on designated roadways in order to prevent damage to soils and vegetation.

The Department of Fish and Game presently operates three special management areas: the Square Butte, the Blackfoot (or Chamberlain Creek), and the new Drummond area. The latter has an additional restriction in that bow hunting is not allowed. Maps and regulations for the three management areas are available in Legislative Council files and were furnished to subcommittee members.

Several other areas, such as Miles City, have informal management agreements. One disadvantage to this program is that more enforcement personnel are needed to manage it, consequently drawing necessary wardens from other areas. A recent Study of Fish and Game Fines and Penalties in Montana by William F. Thomas, an ecology instructor at Great Falls High School, indicates that violations of Montana's wildlife and related laws have increased 300 percent in the last ten years, while hunting and fishing pressure has increased 220 percent. The number of wardens has increased only 32 percent from 1965 to 1973; however, the average number of convictions per warden has increased 150 percent. (Page 7 of the above-mentioned report.)

The Department of Fish and Game is trying to combat the deficiency in the number of law enforcement personnel by training 23 field personnel (biologists, etc.) to work as ex officio wardens during hunting season. In addition, all remaining field personnel are required to be out in the field during high use and density periods. They are identified by special patches on their jackets, and although they do not have the power to make arrests, they provide assistance to wardens.

In summary, although the special management area program is agreed by all to be beneficial for the promotion of improved landowner-sportsman relations, it requires taking additional law enforcement personnel from other areas where, in the opinion of many, too few exist.

Exchange Policy, Department of State Lands

At the public hearing on May 15th, Mr. Norman Starr, representing the Sweetgrass County Preservation Association, offered the suggestion that the state might exchange school lands that are high in recreation potential for other land, public or private, which is equal in value and as closely as possible equal in area. He mentioned that this exchange can be accomplished by the Department of State Lands but that the department has not done much in this area. He reminded the subcommittee that there had been legislation in the last session that would provide for these exchanges.

A search for the statute unearthed HB 184 (Chapter 472), which is reprinted below. Subsection (3) is of particular interest for the purposes of this study. The bill was sponsored by Representative Ed Lien at the request of the Department of State Lands; however, the department has not made any exchanges to date. When asked what the department's policy in this regard was, Leo Berry, Acting Commissioner, indicated that the department will not initiate actions for exchange. A couple of proposals have been submitted by private citizens, (one of them, Mr. Starr) but no action has been taken. Apparently, insufficient funding for the necessary appraisals is a problem.

This policy may or may not in fact contribute to the access problem. If the Department of State Lands were to exchange prime recreational land, it would most likely be to a commercial recreation operation.

AN ACT TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO EXCHANGE STATE LAND FOR PRIVATE LAND SUBJECT TO CERTAIN REQUIREMENTS.

Be it enacted by the Legislature of the State Of Montana:

Section 1. There is a new R.C.M. section numbered 81-307 that reads as follows:

81-307. Exchange of state land for private land. (1) The board is authorized to exchange state land for private land, provided that the private land is of equal or greater value than the state land and as closely as possible equal in area. The board shall place priority on exchanges which result in consolidation of state lands into more compact bodies. This section does not apply to exchanges undertaken under section 81-2704, R.C.M. 1947.

(2) Prior to completing any such exchange, a public hearing shall be held in the county containing the state land to be exchanged. When specific objections to the proposed exchange are raised during any such hearing, the board shall make findings of fact responding to such objections and explaining their action.

(3) If the requirements of subsections (1) and (2) are met, state lands bordering on navigable lakes and streams or other bodies of water with significant public use value may be exchanged for private land if the private land borders on similar navigable lakes, streams, or other bodies of water.

(4) No such exchange shall be made which will induce or encourage large-scale commercial, industrial, or residential development unless the value of such development is considered in determining the fair market value and unless the proposed development will not adversely affect the resources of the existing state tracts or those tracts which the state would receive under the proposed exchange.

Limitations on Liability To Landowner or Tenant For Recreation

Many subcommittee members, survey respondents, and hearing participants have expressed concern over the liability of a landowner or lessee for injuries or damages done to the person or property of a recreationist who may be using his land. In conducting research for the study on sovereign immunity, Bob Person discovered the statutes reprinted below. They do offer some protection for the landowner or lessee, and although they wouldn't stop a suit from being commenced, they probably would influence the outcome if brought forward. The case State ex rel Tucker v. District Court, 155 M 202, 468 P. 2d 773 certainly indicates that the law would apply to a state land lessee as well as federal land lessees. A state land lessee,

however, would still be liable to the state for any damage done to the resource.

Dissemination of these statutes might alleviate the fears of the landowner and cause some sportsmen to be a bit more cautious. Perhaps they could be printed on fishing or hunting regulations.

> 67-808. Restriction on liability to gratuitous licensee for recreation. A landowner or tenant who permits by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor, does not by granting such permission, extend any assurance that such property is safe for any purpose, nor confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant, shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant, unless such act or omission constitutes willful or wanton misconduct.
>
> History: En. Sec. 1, Ch. 138, L. 1965

> 67-809. Recreational purposes defined. Recreational purposes as used herein shall include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking or other pleasure expeditions.
>
> History: En. Sec. 2, Ch. 138, L. 1965

Government Licensee -- Notwithstanding that the agreement between power company and United States government used word "licensee," power company qualified as "landowner or tenant" as used in this section, since legal effect of instrument was to create lease; therefore, power company could properly use this section as an affirmative defense in personal injury action. State ex rel Tucker v. District Court, 155 M 202, 468 P. 2d 773.

1 Montana Department of Intergovernmental Relations. Montana Statistical Review, undated. Helena, Montana.

2 Montana Conservation Needs Committee, U.S. Department of Agriculture, Montana Soil and Water Conservation Needs Inventory, 1969. Bozeman, Montana.

3 Public Land Law Review Commission, One Third of the Nation's Land: A Report to the President and to the Congress. p. 214, 1970. Washington, D.C.

4 U.S. Department of Agriculture, Public Access to Public Domain Lands, p. 2. (Economic Research Service Miscellaneous Publication No. 1122), 1968. Washington, D.C.

5 For a good and recent discussion of conflicting land use policies for state lands, see Montana Environmental Quality Council, Land Use Policy Study, Third Annual Report. pp. 29-32, 1974. Helena, Montana

6 For those recommendations, see The Report of the Committee Established to Study the Diversified Uses of State Lands. December, 1968. Helena, Montana.

7 U.S.D.A. Public Access to Public Domain Lands, p. 2.

8 "Access to Public Lands Across Intervening Private Lands" 8 Land and Water Law Review, 149, (1973).

9 See Frome, "The Big Lockout," Field and Stream, Oct. 1971, p. 58 and O'Hearne, "An Iron Curtain Across the West," Sports Illustrated, Nov. 6, 1961, p. 66.

10 Report to the Colorado General Assembly on Hunting and Fishing Problems in Colorado by the Joint Legislative Interim Committee Created by HJR-10, Second Regular Session, 41st General Assembly. January, 1959.

11 Oregon State Game Commission, Special Report - Public Access to Federal Lands for Recreational Purposes, Feb. 11, 1959.

12 U.S. Senate, Committee on Interior and Insular Affairs, Access to Public Lands. Public Hearing, October 9, 1959. Portland, Oregon.

13 U.S.D.A. Public Access to Public Domain Lands, p. 5.

14 Ibid., p. 9.

15 Ibid., p. 7

16 Ibid., p. 9

17 George Tourtillott, U.S. Forest Service. "National Forest

Access Problems." Testimony presented August 14, 1975, to the Colorado interim legislative Committee on Federal and State Lands. Denver, Colorado.

18 Ibid.

19 The Report ... Diversified Use of State Lands, p. 3

20 William F. Corwin, Recreational Development of Montana State Lands, 1972, p. 50.

21 Center for the Public Interest, Inc. Memorandum on the Validity of the Montana Natural Areas Act of 1974. Bozeman, 1975, p. 5.

22 Virginia Griffing, The Significance of the Trust Concept in the Management and Administration of Montana School Lands. Missoula, 1975, p. 45.

23 Ibid., p. 49.

24 See all sources listed on bibliography relating to social surveys, especially Earl R. Babbie, Survey Research Methods. Belmont, California, 1973.

25 25 Am. Jur., 2d. S1, (1962).

26 Vito A. Ciliberti, Access to the Public Lands in Montana. School of Forestry, University of Montana, Missoula, Montana, 1972, p. 5.

27 28 CJS. SS 1 and 3E, (1936).

28 V. A. Ciliberti, Access to the Public Lands in Montana, p. 6.

29 American Law Institute, Restatement of Property, S 476, Comment g, (1944). St. Paul.

30 25 Am. Jur., 2d, S 35, (1962).

31 V. A. Ciliberti, p. 8.

32 2 American Law of Property S 8.52 (Casner ed. 1952); 2 Thompson, Real Property § 337, at 180 (repl. ed. 1961).

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Objection Raised to
Adverse Committee Report
Mr. Fadden

House BILL NO. 43

INTRODUCED BY Teague, Vincent

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE CHARGING OF FEES FOR HUNTING AND FISHING RIGHTS ON STATE AND FEDERALLY OWNED LANDS; AND PROVIDING A PENALTY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Payments for hunting and fishing disallowed. No person may demand the payment of any sum of money for hunting or fishing privileges on any block of land that includes federal or state-owned land. Included in the definition of payment for hunting or fishing privileges are entry fees, trespass fees, and other similar fees.

Section 2. Certain charges allowed. Minimal charges of five dollars ($5) or less for car parking privileges or as compensation for the time and effort expended in furnishing written permission to hunt or fish, made by a person owning or controlling land on which the general public is allowed to hunt or fish is not a violation of this act.

Section 3. Penalty. A person convicted of violating any of the provisions of this act shall be fined an amount not to exceed one hundred dollars ($100) or be imprisoned in the county jail for any [illegible] not to exceed seven (7) days, or both.

-End-

A P P E N D I C E S

APPENDIX A

44th Legislature LC 0425

Objection Raised to Adverse
Committee Report

HOUSE BILL NO. 43

INTRODUCED BY TEAGUE, ET. AL.

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROHIBIT THE CHARGING OF FEES FOR HUNTING AND FISHING RIGHTS ON STATE AND FEDERALLY OWNED LANDS; AND PROVIDING A PENALTY."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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Section 3. Penalty. A person convicted of violating any of the provisions of this act shall be fined an amount not to exceed one hundred dollars ($100) or be imprisoned in the county jail for any time not to exceed seven (7) days, or both.

-End-

Approved by Committee on
Natural Resources

HOUSE BILL NO. 98

INTRODUCED BY HUENNEKENS, LUEBECK, VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ACCESS TO STATE LANDS AND THAT STATE LANDS SHALL BE OPEN TO THE GENERAL PUBLIC FOR RECREATIONAL USE EXCEPT IN CERTAIN CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The legislature finds that outdoor recreation is an important element in the way of life of many Montanans. It finds furthermore that outdoor recreation is an important element in the industry of tourism, a vital part of Montana's economy.

The impact of outdoor recreational activities is too great for privately owned lands to support. It is therefore necessary that the public lands of the state of Montana be utilized under the multiple-use concept for outdoor recreation.

Section 2. Declaration of right of access. In as much as a majority of state lands are not accessible by public road, the state of Montana affirms its right of access of way through necessity so that it may use its own lands.

Section 3. Lands available for recreation. All state lands consisting of six hundred forty (640) ~~acres~~ or more contiguous ~~lands~~ ACRES suitable for or being used for grazing that have potential for use for outdoor recreation shall, ~~be made available for this use.~~ AS THE OPPORTUNITY DEVELOPS, BE MADE AVAILABLE FOR

RECREATIONAL USE UNDER THE MULTIPLE USE CONCEPT. THE DEPARTMENT OF FISH AND GAME SHALL DEVELOP AN INVENTORY OF SUCH LANDS WHICH SHALL BE KEPT CURRENT IN THE DEPARTMENT OF LANDS. AS EACH LAND UNIT ON SUCH REGISTER COMES UP FOR LEASE RENEGOTIATION, THE DEPARTMENT OF LANDS SHALL TAKE THE FOLLOWING ACTIONS:

(1) WHERE A PUBLIC ROAD EXISTS ALONG OR THROUGH THE LAND UNIT, OR WHERE ADJOINING PUBLIC LANDS TO WHICH THERE IS A PUBLIC ACCESS IN TURN PROVIDE ACCESS TO THE LAND UNIT BEING RENEGOTIATED, THE NEW LEASE SHALL CONTAIN A STATEMENT THAT THE LAND UNIT WILL BE AVAILABLE FOR PUBLIC RECREATIONAL USE UNDER RULES ESTABLISHED BY THE DEPARTMENT OF LANDS.

(2) WHERE NO DIRECT ACCESS TO THE LAND UNIT EXISTS AND THERE ARE EQUAL COMPETITIVE BIDS ON THE LAND, THE CONDITIONS OF THE BIDDING SHALL PRESCRIBE THAT WHICHEVER BIDDER AGREES TO PROVIDE A MEANS OF ACCESS TO ALLOW PUBLIC RECREATIONAL USE OF THE LAND SHALL BE GIVEN PRIORITY CONSIDERATION IN THE AWARDING OF THE LEASE.

(3) WHERE THERE IS NO DIRECT ACCESS TO THE LAND UNIT AND THERE IS NO COMPETITIVE BID, AND THE BIDDER REFUSES TO PROVIDE A MEANS OF ACCESS TO ALLOW PUBLIC RECREATIONAL USE OF THE LAND, A PENALTY OF ONE DOLLAR ($1) PER A.U.M. SHALL BE IMPOSED TO REIMBURSE THE STATE FOR THE RECREATIONAL VALUE ITS CITIZENS HAVE BEEN DEPRIVED OF.

SECTION 4. PROVISION OF ACCESS. ACCESS TO ALL STATE LANDS OPEN FOR RECREATIONAL USE BY THE PUBLIC UNDER THE PROVISIONS OF SECTION 3 SHALL BE IN ACCORDANCE WITH THE FOLLOWING:

(1) WHERE THE UNIT OF STATE LAND CONTACTS A PUBLIC ROAD OR OTHER PUBLIC LANDS, STATE OR FEDERAL, TO WHICH THERE IS PUBLIC

ACCESS, AND THE BOUNDARY IS FENCED, GATES SHALL BE PROVIDED WHERE NEEDED TO THE STATE LAND.

(2) LEASES OR PERMITS FOR STATE LAND EXTENDED UNDER SECTION 3 (2) SHALL INCLUDE A PROVISION UNDER WHICH THE LESSEE OR PERMITTEE GRANTS AN EASEMENT FOR THE DURATION OF THE LEASE OR PERMIT ACROSS HIS PRIVATE OR DEEDED LAND FOR PUBLIC ACCESS TO THE STATE LAND. THE EASEMENT, CALLED A STATE ACCESS TRAIL, MAY BE AN EXISTING ROAD OR TRAIL. IT MAY BE A FIFTEEN (15) FOOT WIDE STRIP OF LAND ALONG OR AS NEAR TO A SECTION LINE AS POSSIBLE AND IN THIS CASE VEHICULAR USE IS NOT IMPLICIT IN THE EASEMENT BUT SHALL BE A MATTER OF TERRAIN SUITABILITY. THE STATE ACCESS TRAIL MAY BE POSTED AT THE DISCRETION OF THE LANDOWNER TO INDICATE THAT IT IS A SPECIAL STATE ACCESS TRAIL ONLY, AND THAT NO TRESPASSING, HUNTING OR SHOOTING IS ALLOWED ON OR ACROSS THE PRIVATE LAND ON EITHER SIDE OF THE RIGHT-OF-WAY. THE OWNER OF THE LAND SHALL HAVE THE RIGHT OF DESIGNATING THE LOCATION OF THIS TRAIL.

(3) IN THE CASES DESCRIBED IN SECTION 3 (3) AND IN CASES WHERE STATE LANDS CONSISTING OF SIX HUNDRED FORTY (640) ACRES OR MORE ARE SURROUNDED BY PRIVATE LAND NOT OWNED DIRECTLY OR INDIRECTLY BY THE HOLDER OF ANY STATE LEASE OR PERMIT, THE STATE MAY CONDEMN THROUGH THE RIGHT OF EMINENT DOMAIN, AN ACCESS TRAIL FIFTEEN (15) FEET WIDE ACROSS THE PRIVATE LAND BY THE SHORTEST AND MOST DIRECT ROUTE FROM THE NEAREST PUBLIC ROAD OR STATE OR FEDERAL LAND TO WHICH THERE IS PUBLIC ACCESS. THIS SPECIAL STATE ACCESS TRAIL MAY BE POSTED AS IN SUBSECTION (2) OF THIS SECTION.

(4) A PERSON VIOLATING THE POSTING PROVISIONS OF THIS ACT BY TRESPASSING, HUNTING OR SHOOTING ON OR ACROSS A STATE ACCESS TRAIL WITHOUT PERMISSION OF THE LANDOWNER IS GUILTY OF A MISDEMEANOR AND

UPON CONVICTION SHALL BE FINED NOT TO EXCEED THREE HUNDRED ($300) OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD NOT TO EXCEED THIRTY (30) DAYS, OR BOTH.

(5) THE DEPARTMENT OF STATE LANDS SHALL PROVIDE OWNERS OF PRIVATE LANDS BORDERING STATE ACCESS TRAILS REFERRED TO IN THIS ACT WITH SIGNS INDICATING THE OFFICIAL POSTING AT THE PRIVATE LANDOWNER'S REQUEST.

Section 5. Closure for safety. State lands used for outdoor recreation may be closed to that use for reasonable periods of time for reasons of public safety.

Section 6. Use restricted. The use of motorized vehicles by the public on the STATE lands described in section 3 ~~of this act is restricted to the roads or trails which may exist on these lands.~~ IS RESTRICTED TO PASSAGE ACROSS THOSE LANDS NECESSARY TO REACH OTHER PUBLIC LANDS AND THEN ONLY ON EXISTING ROADS AND TRAILS.

The person leasing the land or holding a permit for use of the land may determine the roads or trails to be used. WHEN SOIL AND GROUND CONDITIONS HAVE BEEN RENDERED BY RAIN OR SNOW LIABLE TO SERIOUS DAMAGE THROUGH RUTTING AND SUBSEQUENT EROSION THE LEASE OR PERMIT HOLDER MAY APPLY TO THE DEPARTMENT OF LANDS FOR A TEMPORARY CLOSURE TO VEHICLES OF UP TO THREE (3) DAYS WHICH MAY BE RENEWED IF CONDITIONS REQUIRE.

Section 7. Liability. The lessee or permittee of any lands described above shall not be held liable by the state for malicious or accidental property damage or wildfire on those lands resulting from actions by the general public on those lands.

Section 8. ~~Conditions for use.--There shall be access to all state lands open for use by the public under the provisions of section 3 of this act according to the following:~~

~~(1)--Where parcels of state land contact other public lands, state or federal and the common boundary is fenced, gates shall be provided for access to the state lands.~~

~~(2)--Leases and permits for state land used for grazing, agriculture, or forestry shall include a provision under which the lessee or permittee grants a right of way for the duration of the lease or permit across his private or deeded land for public access to the state land.--The right of way granted need be no more than a single vehicle width strip of land or trail with minimum deviation from the trail for the purpose of passing another vehicle inherent in the easement.--It may be posted at the discretion of the landowner to indicate that it is a special state access trial only, and that no trespassing, hunting or shooting is allowed on or across the private land on either side of the right of way.--The owner of the land shall have the right of designating the location of this trail.~~

~~(3)--Where state lands consisting of six hundred forty (640) acres or more, are surrounded by private land not owned directly or indirectly by the holder of any state lease or permit, the state shall condemn through the right of eminent domain as access, land twenty (20) feet wide across the private land, preferably and if possible along a section line, from the nearest public road right of way, of state or federal and to which there is access to the isolated state land.--This special state access right of way may be posted as in subsection (1) of this section.~~

~~(4)--A-person-violating-the-posting-provisions-of-this-act by-trespassing,-hunting-or-shooting-on-or-across-the-private-land on-either-side-of-a-state-access-trail-is-guilty-of-a-misdemeanor and-upon-conviction-shall-be-fined-not-to-exceed-three-hundred dollars-($300)-or-imprisoned-in-the-county-jail-for-a-period-not to-exceed-thirty-(30)-days,-or-both.~~

~~(5)--The-department-of-state-lands-shall-provide-owners-of private-lands-bordering-state-access-trails-referred-to-in-this act-with-signs-indicating-the-official-posting-at-the-private landowner's-request.~~ IF THE LEASE OR PERMIT HOLDER SO DESIRES AND POSTS IN A PROMINENTLY VISIBLE LOCATION THE EXACT LOCATION OF HIS RESIDENCE, HE MAY REQUIRE THAT USERS OF STATE RECREATIONAL LAND OR STATE RECREATIONAL TRAILS NOTIFY HIM THAT THEY WILL BE UPON AND USING SUCH LAND AND TRAILS.

Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

Approved by Committee
on Natural Resources

HOUSE BILL NO. 79

INTRODUCED BY LUEBECK, HUENNEKENS, VINCENT, MENAHAN, KEMMIS, HARPER, TEAGUE, DUSSAULT, KELLY, MULAR, LYNCH

A BILL FOR AN ACT ENTITLED: " AN ACT TO ALLOW UTILIZATION OF MONTANA STREAMS AND RIVERS FOR RECREATIONAL USES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The purpose of this act is to allow utilization of ~~all~~ Montana rivers and streams for recreational uses.

Section 2. Recreational use. Streams and rivers of the state of Montana, HAVING A MEAN ANNUAL FLOW OF AT LEAST ~~TEN-(10) THIRTY-(30)~~ TWO HUNDRED (200) CUBIC FEET PER SECOND between the lines of ordinary high water WITHIN THE STREAMBED, may be utilized for recreational uses by any natural person. This use is a public use in accordance with Article IX, section 3, of the Montana constitution. This use does not allow trespass of land adjacent to the stream or river.

Section 3. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

March 28, 1975

Senator Neil Lynch
Chairman of the Committee on Priorities

Dear Senator Lynch:

In response to your letter of request dated March 27, 1975, asking for a back-up statement on SJR 26: During past sessions of the legislature, numerous bills have been initiated addressing themselves to the access situation. Outspoken individuals have and are making strong statements on the subject of public access to hunting and fishing areas. Reaction has come in the form of closing of individual lands, parts of counties and recently a series of petitions which, if initiated, closed the upper regions of the Jefferson River and all its tributaries.

Sound and sensible people have been working hard on approaches and programs to solve the situation. Examples are wildlife management areas on the Little Blackfoot near Drummond, and Square Butte near Great Falls. In addition State Grazing Districts and Conservation Districts have discussed in detail the possibilities of management areas or variations thereof with the Fish and Game Department.

It is my feeling that a study by the Legislative Council assisted by the people mentioned in my resolution would have the effect of outlining the actual situation tempering the tone of various individuals and groups and setting the stage where developed approaches will have an opportunity to be implemented for the benefit of both the general public, the private landowner and Montana.

Sincerely yours,

Senator Terry Murphy

SENATE JOINT RESOLUTION NO. 26

INTRODUCED BY MURPHY GREELY DUNKLE, FASBENDER, CETRONE, MATHERS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE LEGISLATIVE COUNCIL IN COOPERATION WITH OTHER INTERESTED PARTIES AND AGENCIES TO UNDERTAKE AN INTERIM STUDY OF FISHING AND HUNTING ACCESS IN MONTANA.

WHEREAS, adequate access for Montana sportsmen continues to cause controversy between landowners and sportsmen; and

WHEREAS, there are many cooperative agreements that are proving workable; and

WHEREAS, forced access is not acceptable to landowners and is a detriment to long-term sportsmen-landowner relations; and

WHEREAS, legal remedies and other solutions have not been thoroughly researched and studied; and

WHEREAS, an interim study would facilitate cooperative solutions to this difficult issue; and

WHEREAS, such a study would encourage increased cooperation between landowners and sportsmen.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign to the appropriate standing committee a study of public access problems in Montana during the interim and report back to the Forty-fifth

Legislature with their findings and recommendations.

BE IT FURTHER RESOLVED, that the following state and federal agencies and private organizations are requested to appoint representatives to an advisory task force to work with the interim study committee:

The United States Department of Agriculture, the United States Department of Interior, the Department of State Lands, the Department of Natural Resources and Conservation, the Department of Fish and Game, the Department of Livestock, the Association of Grazing and Conservation Districts, the Montana Stock Growers Association, the Montana Wool Growers Association, the Montana Wilderness Association, the Montana Wildlife Federation, the Environmental Information Center, the Northern Plains Resource Council, Trout Unlimited, Montana Farmers Union and the Montana Farm Burea Federation.

BE IT FURTHER RESOLVED, that the Interim Committee in cooperation with the Task Force shall hold at least one (1) public hearing in each of the five (5) public service districts for the purpose of eliciting public comment on this important issue.

BE IT FURTHER RESOLVED, that once the Interim Committee recommendations are formulated that the hearing procedure mentioned in the previous paragraph shall be repeated in order to elicit further comment.

BE IT FURTHER RESOLVED, that the Legislative Interim Committee shall report back to the Forty-fifth Legislature with a written report of their findings and recommendations.

-End-

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

JOHN C. VINCENT
DISTRICT NO. 78
GALLATIN COUNTY
SES S TRACY
BOZEMAN MONTANA 59715

COMMITTEES
JUDICIARY
BUSINESS AND INDUSTRY

March 31, 1975

J. Lynch, Chairman
Joint Rules Committee
Montana Senate
Capitol Building
Helena, Montana 59601

Dear Chairman Lynch,

HJR 29 requests a study of the problem of access to public lands.

Access legislation, as you know, is a matter of vital concern to urban sportsmen - who emphatically believe that access to public lands is becoming more difficult and restrictive as well as to ranchers and farmers who believe that their property rights are being threatened by the efforts of sportsmen to secure improved public access to public lands.

Because of a great diversity of opinion on the issue of access, especially between rural and urban interests, access legislation has gotten nowhere during this legislative session.

And yet, something must be done, as great pressure and antagonism is building between these interests.

A study seems to be the only and last option open to us. I believe that such a study - which was, by the way, supported in committee by sportsmen and the Farm Bureau - could well provide some factual basis for access legislation that would prove palatable both to sportsmen and ranching interests.

In addition, I believe that the study would meet with broad political acceptance, primarily because the problem is severe and definitely in need of resolution.

I strongly urge that the study called for in HJR 29 be approved and funded.

Sincerely,

John C. Vincent

Rep. John C. Vincent

Note: (A) "Appropriate Subcommittee" should read "Interim Committee."
(B) I believe that, if approved, the interim committee should take its work to the people by holding meetings in a variety of rural and urban locations...funds permitting.

jkl

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

April 3, 1975

Committee on Priorities
Office of the Speaker of the House
Capitol Building
Helena, Mt. 59601

Gentlemen:

In this legislative session several topics or areas of concern received heated debate and a variety of ideas on what should be done. One of these topics is access to public lands within the state of Montana. At least five bills and resolutions were introduced in relation to this concern: 1) House Joint Resolution No. 29, request for a study of the problem of access; 2) House Bill No. 43, prohibiting fees for fishing rights on federal and state lands; 3) House Bill No. 98, recreation use of state land and right of access; 4) House Bill No. 79, recreational use of waters and 5) Senate Joint Resolution No. 26, fishing access to public lands. The most important are House Joint Resolution 29 and Senate Joint Resolution No. 26. These resolutions each seek an interim study for the purpose of developing and presenting alternatives to the present conflict over public access. House Joint Resolution 29 is the more inclusive, while Senate Joint Resolution No. 26 is the better stated resolution.

This letter is a request that the combined intent of House Joint Resolution No. 29 and Senate Joint Resolution No. 26 be carried out, for the problem of public access continues and will do so until a fair method of handling the problem can be established.

Rationale for an interim study follows:

1) Adequate access continues to cause controversy between landowners and sportsmen;
2) There are cooperative agreements that are workable;
3) Forced access is detrimental and unacceptable;
4) Legal and other remedies need further research; and
5) An interim study might encourage cooperation by all concerned.

The interim study should:

1) Survey the legislation and literature of other western states to ascertain possible alternatives for action;
2) Insure the participation of all affected persons to assure protection of their views;
3) Develop alternatives that are applicable to Montana;
4) If necessary, draft suggested legislation for comment, review and presentation to affected parties; and
5) Draft and recommend legislation, if required, for the next legislative session.

It is hoped this interim study can be undertaken in as expeditious a manner as possible, for the issue of public access to public lands will continue to grow as Montana grows, and it will be an unnecessarily divisive force.

As the material to be considered is most probably of a legal nature, the committee of the Judiciary is suggested as the appropriate committee to handle the study.

Sincerely,

Herb Huennekens
Representative Herb Huennekens
Chairman
House Judiciary Committee

HH:pb

HOUSE JOINT RESOLUTION NO. 29

INTRODUCED BY VINCENT, HUENNEKENS, LUEBECK, HARPER, TEAGUE

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE COMMITTEE ON LEGISLATIVE PRIORITIES ~~APPOINT A STANDING COMMITTEE~~ ASSIGN AN APPROPRIATE SUBCOMMITTEE TO STUDY THE PROBLEM OF ACCESS TO PUBLIC LANDS IN THE STATE.

WHEREAS, federal and state lands within Montana provide immeasurable recreational value to Montanans; and

WHEREAS, denials of public access to those lands constitute a serious threat to the rights of Montanans to use their public lands.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the committee on legislative priorities is requested to ~~appoint the appropriate standing committee to~~ ASSIGN TO THE APPROPRIATE SUBCOMMITTEE A study OF the problem of public access to federal and state lands in Montana.

BE IT FURTHER RESOLVED, that the committee study the various ways that public access can be maintained and increased especially where private land corridors now interfere with that access.

BE IT FURTHER RESOLVED, that the committee report its findings together with recommended legislation to the Forty-fifth Legislature.

-End-

HOUSE JOINT RESOLUTION NO. 17

INTRODUCED BY VINCENT, RICHARDS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEE TO STUDY THE FEASIBILITY OF VARIOUS PROGRAMS BY WHICH THE STATE OF MONTANA MIGHT PRESERVE AND PROTECT PRIME AGRICULTURAL AND RECREATIONAL LANDS.

WHEREAS, much prime agricultural or recreational land is being used for purposes other than agriculture and recreation; and

WHEREAS, the continued utilization of such lands for agriculture or recreation is essential to retaining the amenities of Montana as recognized in the preamble to the Montana constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the feasibility of classifying prime agricultural and recreational lands for their relative importance to retaining the essential character of Montana, and to further consider programs for maintaining traditional agricultural or recreational uses on such lands.

BE IT FURTHER RESOLVED, that the assigned standing committees report their findings and recommendations to the first session of the Forty-fifth Legislature.

-End-

APPENDIX B*

*Source: Recreational Development of Montana State Lands by William F. Corwin

Results of Questionnaire Mailed to Other States with Trust Land.

Questionnaires were sent to Alaska, Arizona, California, Colorado, Idaho, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, and Wyoming. New Mexico, Oklahoma, Texas, and Utah did not reply. Nevada has sold all trust land. Some states did not answer every question.

A. Public Use of State Lands-

1. Is the general public allowed access to all or some State Trust Land?

    1. Alaska: "Once leased, access would be subject to lessee's concurrence. No access is prohibited on unoccupied Trust lands, as a general rule."
    2. Arizona: "No"
    3. California: "All access, use or occupancy must be specifically authorized by the State Land Commission."
    4. Colorado: "Lessee may prohibit public access except on a 71,000 acre tract known as the Colorado State Forest."
    5. Idaho: "Qualified access - the general public is permitted access to extensively managed lands i.e., grazing or timber unless such access conflicts directly with licensed uses."
    6. Nebraska: "Lessee's through their agricultural leases, control access to such leases."
    7. New Mexico: Although New Mexico did not respond to the questionnaire, a 1969 report entitled The New Mexico State Land Office, published by The Dikewood Corporation, Albuquerque, New Mexico, indicates that trust lands are open to licensed hunting and fishing only.
    8. North Dakota: "No. Tenant is in full control at present."
    9. Oregon: "All state school lands are open to the public."
    10. South Dakota: "Lessees control access."
    11. Wyoming: "All land is open for hunting and fishing. Person using land must notify lessee that he is on the area."

2. If so, how is the trust compensated for such use?

    1. Alaska: "No compensation."
    2. California: "All allowed uses are so allowed in consideration of fair market value."

3. Idaho: "No compensation."
4. New Mexico: The Fish and Game Department leases access rights for hunting and fishing.
5. Oregon: "Only those public uses which damage, consume or foster private profit require compensation."
6. Wyoming: "No compensation received."

a. Is there a general recreation license for access to State Trust Land? All states replied - "NO."
b. Does your state sell access rights to a Fish and Game Department?

1. Alaska: "This type of access is generally granted without compensation."
2. Arizona: "No"
3. California: "Yes, the sale is at fair market value."
4. Idaho: "Discussions are underway to establish a standard leasing procedure for lands required by the Fish and Game Department for access and for wildlife habitat."
5. North Dakota: "No"
6. New Mexico: As stated above, a report indicates that the Fish and Game Department leases hunting and fishing rights on New Mexico trust lands.
7. Oregon: "No"
8. Wyoming: "No"

3. Is the lessee's consent necessary before the public may enter the land?

1. Alaska: "Yes"
2. Arizona: No answer, but one could assume a "yes" answer because the public does not have access rights.
3. California: "If the State Land Commission has issued a lease, other users must make arrangments for the use of the leased lands."
4. Colorado: "Yes -- except State Forests."
5. Idaho: "No, but lands may be posted against general access upon permission of the State Land Commissioner."
6. Nebraska: "Lessees control access."
7. New Mexico: "The statutes declare that anyone other than a lessee who enters upon or uses state land without permission of the Land Commissioner, is in trespass and subject to fine or to imprisonment in default of the fine," The New Mexico State Land Office, Dikewood Corporation, Albuquerque, New Mexico. However, see answer to question A-1 and A2."
8. North Dakota: "Yes, if it is posted by tenant."
9. Oregon: "Not at present. Some types of leases which require considerable development expense will eventually need to exercise controls."

10. Wyoming: "No consent necessary, but lessee much be notified for hunting use."

    a. Are lessees allowed to charge any access fee?

        1. Alaska: "No"
        2. Arizona: "No"
        3. California: "A lessee may make charges for access and conveniences made available to the public."
        4. Colorado: "No - - strictly prohibited and cause cancellation of a grazing lease."
        5. Idaho: "Only if their lease is issued for the operation of a concession-type business."
        6. North Dakota: "In most cases this is not the case."
        7. Oregon: "Definitely not."
        8. Wyoming: "No"

4. How is the responsiblilty for littering, vandalism or fire managed?

    1. Alaska: "Littering and vandalism is subject to local law enforcement activity. Fire is handled through our Forest Warden Program."
    2. California: "All maintenance responsibilities are the duty of the lessee. The state requires surety bonds to insure performance."
    3. Colorado: "Littering is the responsibility of the lessee. Fire protection is provided by the Colorado State Forest Service.
    4. Idaho: "The responsibility rests with the lessee."
    5. Oregon: "It is against a specific law as well as protected by civil property rights. Enforcement is seldom needed because of the location of school lands."
    6. Wyoming: "Lessee is to report all littering to Land Office and assist in prevention according to direction of Commissioner. In the event of fire, lessee is responsible to prevent and to help control it."

5. Is it possible to estimate the amount of staff time and funds required to manage recreational uses?

    1. Alaska: "Our recreational uses are handled by the Division of Parks within the Department of Natural Resources."
    2. Arizona: "No--no basis."
    3. California: "School lands require about 1 1/2 man years per year. Sovereign lands require about 4 man years per year."
    4. Colorado: "Recreation use of Colorado State Forest is a major problem. It requires us to keep a Forester

there full time and while recreation management is not his prime duty, it takes up most of his time."
5. Idaho: "No, but the (cost-benefit) ratio is very favorable."
6. Oregon: "It is a marginal activity in our agency."
7. Wyoming: "Not at present."

6. Are there any provisions in grazing and agricultural leases relating to recreation?

1. Alaska: "Grazing and agricultural leases prohibit the denial of access for hunting and fishing unless specific permission is obtained from the state."
2. Arizona: "No"
3. California: "No"
4. Colorado: "No --- our lease does, however, reserve the right to put the land to multiple use by granting subsidiary leases upon said premises or any part there of at any time, for any purpose other than the rights specifically granted, provided such subsidiary leases do not prevent the reasonable exercise of said rights and privileges. Recreation could be one use."
5. Idaho: "The lease reserves the public right of access for hunting and fishing."
6. North Dakota: "None."
7. Oregon: "Yes -- see attached copy."
The following is the provision referred to:
"The lease holder, or tenantry right, leased and let by this lease, is for grazing purposes only, and all other rights are reserved to the state."

B. Commercial Recreation Developments-

1. Are any State Trust Lands leased for the purpose of commercial recreation developments?

1. Alaska: "Yes"
2. Arizona: "Yes"
3. California: "Yes"
4. Colorado: "One lease proposed."
5. Idaho: "Yes"
6. Nebraska: "One 320 acre tract to a Commercial Recreation Development Company."
7. North Dakota: "No"
8. Oregon: "Such leasing is under consideration."
9. South Dakota: "Such leasing is under consideration."
10. Wyoming: "Yes"

2. If so, what type and number of commercial recreational developments:

1. Alaska: "--Generally in connection with the operation of a public recreation area, i.e., concession stands, etc."

2. Arizona: "Small number; speedways, glider fields, trail-bike grounds, public parks, etc."
3. California: "There are currently in excess 3,000 leases in existence."
4. Colorado: "Proposed lease if for a resort with lodges, stores, garages, condominium buildings and recreational facilities."
5. Idaho: "Six winter sports compounds, one marina, and one resort."
6. Oregon: "Two trailer parking sites."
7. Wyoming: "Two for skiing."

3. How is the rental for commercial recreation leases determined?

1. Alaska: "These leases are generally negotiated annually."
2. Arizona: "Annual percentage return on appraised worth of land being used."
3. California: "6% of fair market value annually."
4. Colorado: "By negotiation."
5. Idaho: a. "Flat rate based on 6% of land value."
   b. "Flat minimum plus a percent of gross based on kind of business."
6. Nebraska: "Only calculated as to the highest agricultural rent that could be charged in the area."
7. Oregon: "Appraised plus negotiation. Bidding, if utilized, will be conditioned for award to the best (environmental, economic, etc.) plan development and management."
8. Wyoming: "Based on appraised values and comparable leases on private and federal lands."

4. What is the term of commercial recreation leases?

1. Arizona: "Variable -- up to 10 years."
2. California: "Up to 49 years, with rent review at five-year intervals."
3. Colorado: The one proposed lease is for 50 years. Rental review at five-year intervals.
4. Idaho: "10 years - limited by the constitution."
5. Oregon: "Flexible."
6. Wyoming: "Up to 25 years."

5. Is the State's interest in such development limited to the grant of the lease itself, or is there further contribution by the state during the development stage itself?

1. Alaska: "The recreation facility is normally constructed and maintained by the state."
2. Arizona: "Limited to lease grant."
3. California: "The land lease is the extent of the State Lands Commission's contribution."
4. Colorado: "Limited to lease terms."
5. Idaho: "At present time all development is done by the lessee."

6. Oklahoma: Although Oklahoma did not reply to the questionnaire, previous correspondence with the State Land Office in Oklahoma, indicates that this state constructs and manages large resort hotels on state land.
7. Oregon: "The state will participate in and exercise final approval of development."
8. Wyoming: "All plans of development must be board approved."

C. Cabin Site Leasing-

1. Does the state lease cabin sites on State trust Land?

1. Alaska: "Yes"
2. Arizona: "No"
3. California: "Yes"
4. Colorado: "No"
5. Idaho: "Yes"
6. North Dakota: "No"
7. Oregon: "Such leasing is under consideration."
8. South Dakota: "No"
9. Wyoming: "Yes"

2. Is there any estimate of the number of cabin sites leased?

1. Alaska: "2,346 active leases."
2. California: "There are over 100 cabin site leases on both school and sovereign lands."
3. Idaho: "606"
4. Oregon: "Between 12 and 20 only, at this time."
5. Wyoming: "23"

3. How much income is generated by this type of use? What are the rentals?

1. Alaska: "$152,746 has been derived from these leases to date."
2. California: "Minimum rental for a cabin site is $65 per year. The total annual rental from cabin sites is unknown, but minimal."
3. Idaho: "Fiscal Year 1972 - $65,687.11. Class I (waterfront) - $125.00 per year. Class II - $96.00 per year. Class III - $62.00 per year. These rates do do not reflect market value and are set by the Land Board."
4. Oregon: "Unknown."
5. Wyoming: "Varies from minimum of $50.00 per year to $320.00 per year."

5. Has this use been found to be a viable means to generate income for the state, or have problems with vandalism, property damage, management costs or interference with the rights of grazing and agricultural leases been so great so as to greatly reduce the benefits to the trust?

1. Alaska: "This program has realized a significant income to the state without significant problems."
2. California: "This has not been a good means of generating revenue due to the great amount of lease service necessary. (Lease service includes assignment, amendment, collection and policing)."
3. Colorado: "We considered cabin leases but in our opinion, the policing would be too costly in terms of management."
4. Idaho: "Most viable - use conflicts can be avoided through careful planning by the agency."
5. Wyoming: "Have just commenced opening areas for this type of leasing. Appears to have a high return. Initial state investment could be high, depending on type of improvements needed for area prior to leasing."

APPENDIX C

ACCESSIBILITY OF STATE SCHOOL TRUST

TABLE I LANDS POSSESSING RECREATIONAL VALUES

Prepared by Department of State Lands

January, 1976

Access \ Recreation Value	A	B	C+	C	NUMBER OF INVENTORIED PARCELS	% OF INVENTORIED PARCELS
Readily Accessible	103 / 12.2%	98 / 11.6%	41 / 4.9%	98 / 11.6%	340	40.3%
Access Within ½ Mi.	16 / 1.9%	38 / 4.5%	8 / 1%	63 / 7.3%	125	14.7%
Access Within 1 Mi.	67 / 7.9%	124 / 14.7%	25 / 3%	162 / 19.2%	378	44.8%
Access Beyond 1 Mi.	0 / 0%	2 / .2%	1 / .1%	1 / .1%	4	.4%
Total Inventoried Parcels	186	262	75	324	847	
% of Inventoried Parcels	22%	30.8%	8.9%	38.1%		100%
% of Parcels in Inventory Area	4.10%	5.77%	1.65%	7.14%		

- A "parcel", for the purposes of the recreation inventory is defined as all of the contiguous State land within one section.
- Total State parcels within completed inventory area equals 4,535
- Total % of all State parcels inventoried to date equals 40%
- Total evaluated parcels to date equals 847
- Total % of all State parcels evaluated to date equals 19%

TABLE II

STATE LANDS INCLUDED IN RECREATION INVENTORY

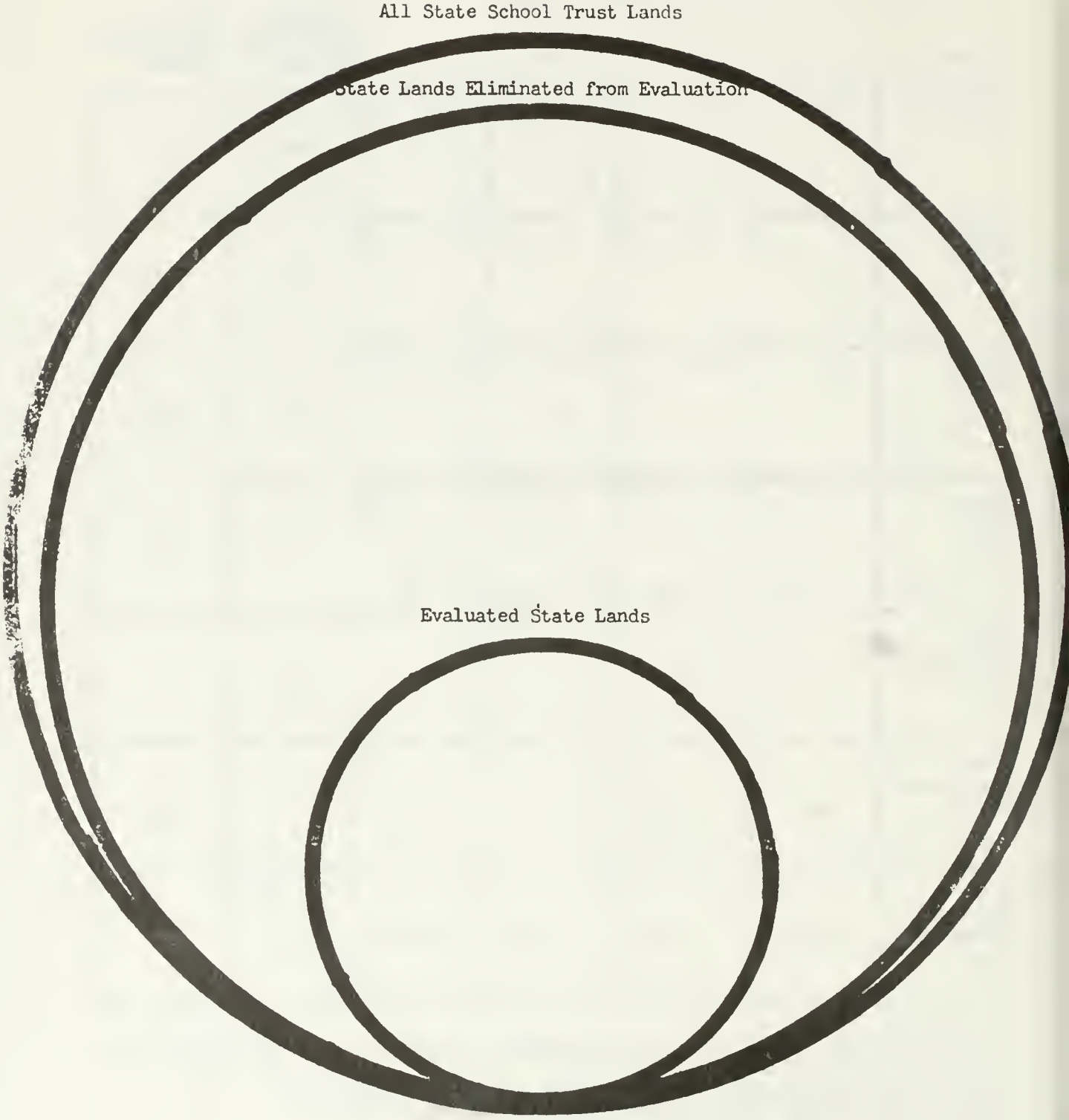
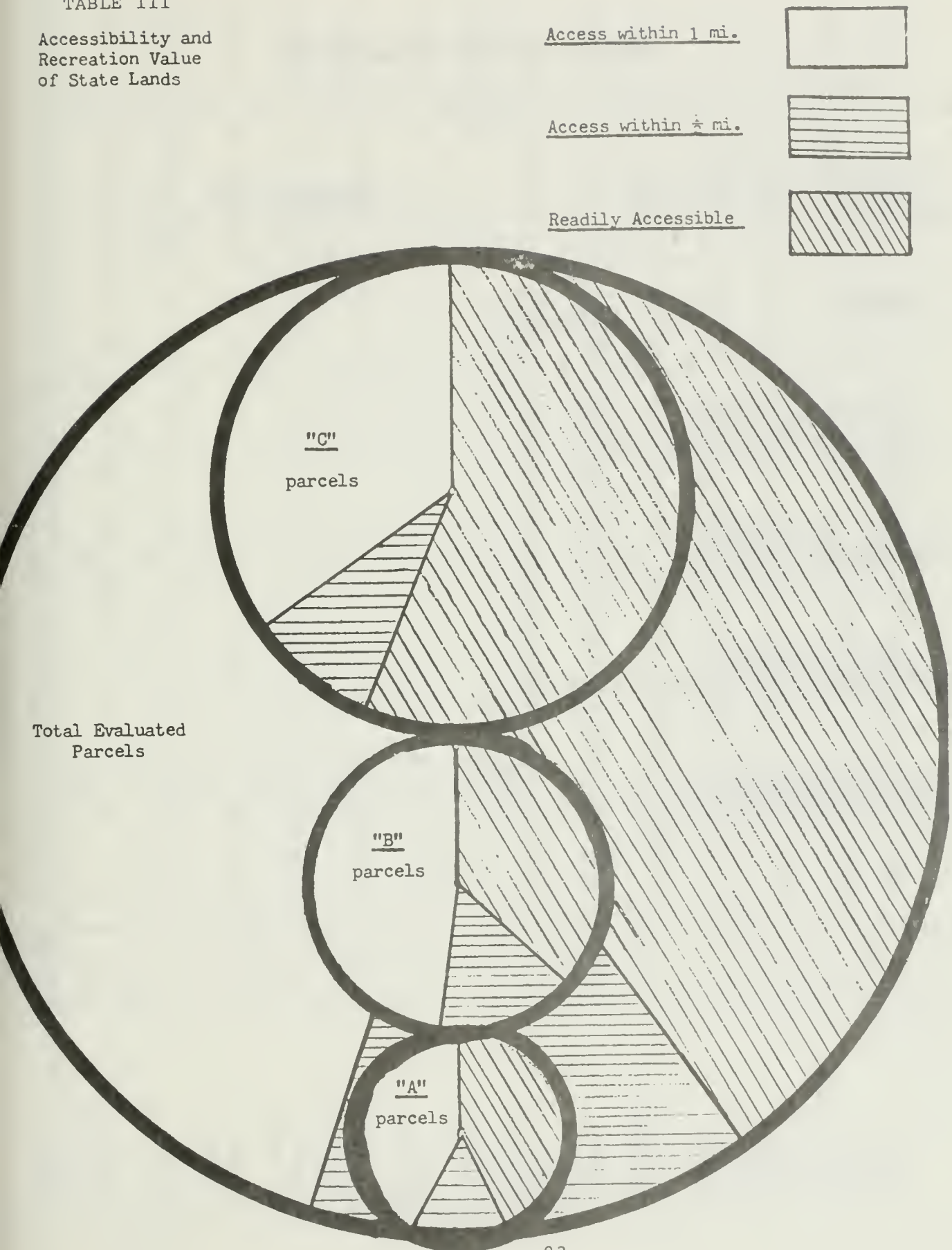


TABLE III

Accessibility and
Recreation Value
of State Lands



CODE FOR RECREATION VALUE BY COUNTIES

TABLE IV

Example:

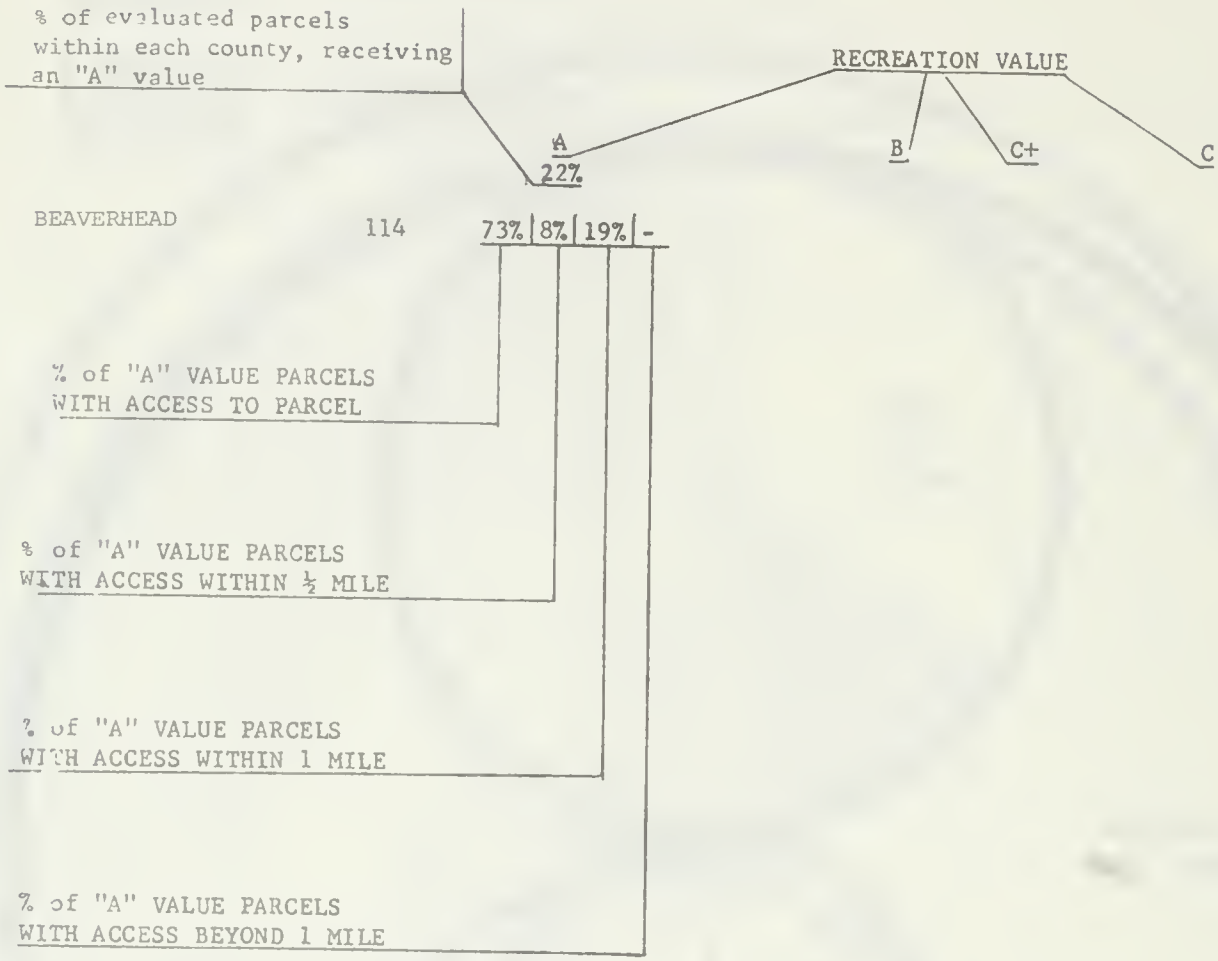


TABLE V

COUNTY	NO. PARCELS EVALUATED	RECREATION VALUE															
		A				B				O+				C			
Beaverhead Access	114	22%	73%	8%	19%	0%	32%	44%	8%	48%	0%	17%	64%	7%	29%	0%	29%	45%	13%	42%	0%
Big Horn * Access	28	11%	0%	0%	100%	0%	37%	0%	0%	100%	0%	4%	0%	100%	0%	0%	48%	15%	54%	31%	0%
Blaine * Access	1	0%	0%	0%	0%	0%	100%	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Broadwater Access	10	30%	67%	33%	0%	0%	20%	50%	50%	0%	0%	10%	0%	0%	100%	0%	40%	25%	25%	50%	0%
Carbon Access	34	35%	17%	25%	58%	0%	12%	75%	0%	25%	0%	9%	100%	0%	0%	0%	44%	67%	13%	20%	0%
Cascade * Access	17	47%	38%	0%	62%	0%	41%	86%	0%	14%	0%	0%	0%	0%	0%	0%	12%	50%	0%	50%	0%
Chouteau * Access	7	43%	0%	0%	100%	0%	57%	0%	0%	100%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Custer * Access	31	0%	0%	0%	0%	0%	29%	44%	44%	12%	0%	13%	50%	0%	50%	0%	58%	45%	22%	33%	0%
Dawson * Access	13	8%	100%	0%	0%	0%	38%	0%	40%	60%	0%	23%	100%	0%	0%	0%	31%	50%	0%	50%	0%
Deer Lodge Access	7	14%	0%	100%	0%	0%	43%	100%	0%	0%	0%	0%	0%	0%	0%	0%	43%	33%	0%	67%	0%
Fergus * Access	6	17%	0%	0%	100%	0%	50%	0%	0%	100%	0%	0%	0%	0%	0%	0%	33%	50%	0%	50%	0%
Gallatin Access	16	44%	29%	14%	57%	0%	31%	60%	20%	20%	0%	19%	67%	33%	0%	0%	6%	100%	0%	0%	0%
Golden Valley Access	11	18%	100%	0%	0%	0%	73%	63%	25%	12%	0%	0%	0%	0%	0%	0%	9%	0%	100%	0%	0%
Granite Access	9	35%	100%	0%	0%	0%	22%	100%	0%	0%	0%	0%	0%	0%	0%	0%	33%	33%	0%	67%	0%

COUNTY	NO. PARCELS EVALUATED	RECREATION VALUE			
		A	B	0+	C
Jefferson Access	22	9% 50% 50% 0% 0%	14% 33.3 33.3 33.3 0%	14% 33% 0% 67% 0%	63% 0% 28% 72% 0%
Lewis and Clark Access	85	35% 73% 7% 20% 0%	25% 47% 0% 53% 0%	5% 50% 0% 50% 0%	35% 17% 7% 73% 3%
Madison Access	70	17% 50% 8% 42% 0%	39% 44% 4% 52% 0%	7% 20% 40% 40% 0%	37% 27% 27% 46% 0%
McCone Access	33	3% 100% 0% 0% 0%	6% 100% 0% 0% 0%	0% 0% 0% 0% 0%	91% 50% 0% 50% 0%
Meagher Access	39	33% 54% 8% 38%	31% 17% 25% 41% 17%	8% 33.3 0% 33.3 33.3	28% 36% 9% 55% 0%
Missoula * Access	5	60% 100% 0% 0% 0%	20% 0% 100% 0% 0%	20% 0% 0% 100% 0%	0% 0% 0% 0% 0%
Mussellshell Access	57	5% 100% 0% 0% 0%	18% 70% 20% 10% 0%	12% 57% 14% 29% 0%	65% 38% 19% 43% 0%
Park Access	27	30% 75% 25% 25% 0%	40% 18% 27% 55% 0%	4% 100% 0% 0% 0%	26% 14% 43% 43% 0%
Phillips * Access	4	25% 0% 0% 100% 0%	25% 0% 0% 100% 0%	50% 100% 0% 0% 0%	0% 0% 0% 0% 0%
Powder River * Access	6	0% 0% 0% 0% 0%	17% 0% 0% 100% 0%	0% 0% 0% 0% 0%	83% 0% 60% 40% 0%
Powell Access	20	45% 55% 0% 45% 0%	40% 63% 0% 37% 0%	0% 0% 0% 0% 0%	15% 0% 0% 100% 0%
Prairie * Access	6	0% 0% 0% 0% 0%	0% 0% 0% 0% 0%	33% 100% 0% 0% 0%	67% 25% 25% 50% 0%
Tavalli Access	4	0% 0% 0% 0% 0%	50% 50% 0% 50% 0%	0% 0% 0% 0% 0%	50% 0% 0% 100% 0%

COUNTY	NO. PARCELS EVALUATED	RECREATION VALUE			
		A	B	C+	C
Richland * Access	11	18% 0% 0% 100% 0%	82% 0% 44% 56% 0%	0% 0% 0% 0% 0%	0% 0% 0% 0%
Rosebud Access	18	11% 100% 0% 0% 0%	11% 100% 0% 0% 0%	6% 100% 0% 0%	72% 8% 46% 46% 0%
Silver Bow Access	6	0% 0% 0% 0% 0%	33.3% 50% 0% 50% 0%	33.3% 50% 50% 0% 0%	33.3% 50% 0% 50% 0%
Stillwater Access	18	17% 100% 0% 0% 0%	39% 29% 29% 42% 0%	28% 80% 0% 20% 0%	16% 33% 0% 67% 0%
Sweetgrass Access	21	33% 57% 0% 43% 0%	38% 25% 25% 50% 0%	9% 0% 0% 100% 0%	20% 0% 25% 75% 0%
Teton Access	38	29% 9% 9% 82% 0%	50% 5% 11% 84% 0%	0% 0% 0% 0% 0%	21% 12% 0% 88% 0%
Treasure Access	10	0% 0% 0% 0% 0%	10% 0% 0% 100% 0%	10% 100%	80% 12% 25% 63% 0%
Wheatland Access	14	50% 43% 14% 43% 0%	36% 20% 20% 60% 0%	0% 0% 0% 0% 0%	14% 0% 0% 100% 0%
Wibaux * Access	2	0% 0% 0% 0% 0%	0% 0% 0% 0% 0%	0% 0% 0% 0% 0%	100% 50% 0% 50% 0%
Yellowstone Access	27	4% 100% 0% 0% 0%	37% 40% 20% 40% 0%	26% 28% 14% 58% 0%	33% 0% 56% 44% 0%

*Recreation Inventory not completed in this county.

APPENDIX D

Montana Legislative Council

State Capitol

Helena, 59601

Dear State Land Lessee:

At the end of the 1975 legislative session, the Committee on Priorities assigned a study of public access to public and private lands for recreation to a joint committee composed of members from the Natural Resources and from the Agriculture, Livestock, and Irrigation Standing Committees. Those legislators appointed to conduct this study are:

Senator Carroll Graham, Chairman
Senator Elmer Flynn
Senator Jack Galt
Senator George Roskie

Representative Verner Bertelsen, Vice-chairman
Representative Fred Barrett
Representative James Fleming
Representative Al Luebeck.

The necessity of undertaking a study on public access was determined by the introduction of at least five bills and resolutions on the subject in the last legislative session.

One of the more controversial aspects of the overall access problem is that of recreational use, control, and access to state land, particularly school trust land. In order to gain first-hand information on some of the problems and possible solutions to recreational use of and access to state lands, the subcommittee would like your help in answering the enclosed questionnaire. The questions were developed in cooperation with the Department of State Lands by the subcommittee's researcher, Debbie Schmidt. The questionnaire was reviewed and modified by the subcommittee at its last meeting. It is being sent to 300 geographically selected lessees of varying types of land across the state.

Please answer the questions on the enclosed pages as completely as possible and return them in the enclosed stamped envelope no later than December 15.

If you do not want to answer the questions, please return the unanswered questionnaire anyway. You may sign your name to the questionnaire if you wish; however, we will make no effort to identify any particular response to a specific lessee. You may remain anonymous.

The results of the questionnaire will be available upon request, and the subcommittee will hold hearings at the beginning of the next year at which you may testify in person, if you like.

If you have any questions, please contact Debbie Schmidt at the Legislative Council at (406) 449-3064. We know you are busy, but we would appreciate your taking the time to give us this information. Any comments or questions you have will be welcome.

Sincerely,

Senator Carroll Graham

Senator Carroll Graham (dbs)
Chairman, Subcommittee on
Agricultural Lands

CG:dw
Enclosure

QUESTIONNAIRE TO GEOGRAPHICALLY SELECTED LESSEES OF STATE TRUST LAND

1. Please check the type of state lease you have:

   ☐ Grazing ☐ Timber

   ☐ Cropland ☐ Other - please specify_____

   _____

2. Do you lease land from any other sources?

   ☐ Yes ☐ No

   If so, please check the lessor:

   ☐ BLM ☐ Forest Service ☐ Private

3. a. Do you allow recreational use of your private land?
   b. Do you require recreationists to obtain permission before entering the land?

   a. ☐ Yes b. ☐ Yes

   ☐ No ☐ No

4. a. Do you allow recreational use of your leased state land?
   b. Do you require recreationists to obtain permission before entering the land?

   a. ☐ Yes b. ☐ Yes

   ☐ No ☐ No

5. a. Do you allow recreationists to use land you may lease from other sources?
   b. Does your lease require you to allow recreational use?

   a. ☐ Yes b. ☐ Yes

   ☐ No ☐ No

6. a. Do you charge user or parking fees for the right to hunt or fish on your private or leased land?
   b. If so, how much do you charge?

   a. ☐ Yes b. Amount charged $_____

   ☐ No

(Please use the other side of the page if you need more space to answer the questions)

7. Have you had problems with recreationists causing damage to either your privately-owned land or your leased land? If so, please specify number of times and extent of damage on each type of land.

8. If you do not open your privately owned or your leased land for recreation, what are your reasons for closing off this land?

9. If the state were to require that recreationists be allowed to use the state land you lease, under what conditions would this be most acceptable to you?

- ☐ Economic incentives
- ☐ User Fees
- ☐ Relief from liability
- ☐ Relief from management responsibilities
- ☐ Other_____

10. How should recreational aspects of state land be managed if recreationists are allowed to use it?

- ☐ By the State Land Department
- ☐ By Fish and Game
- ☐ By the lessee only
- ☐ By a combination of above

11. Do you think recreational use of your leased land under proper management will be compatible with your present operations?

12. Under what conditions would you allow recreationists to cross your privately owned land to reach state or BLM or Forest Service land?

13. Have you or would you consider using the recreational resources of your private land as a means of supplementing your income?

14. Other comments:

(Please use the other side of the page if you need more space to answer the questions)

APPENDIX E

FINAL RESULTS OF QUESTIONNAIRE TO GEOGRAPHICALLY SELECTED LESSEES OF STATE TRUST LAND

Total questionnaires mailed to selected lessees -- 300

Total responses received by January 26 cut-off date -- 168

Percentage of response -- 56%

Question 1. Please check the type of state lease you have:

168 total responses

Grazing --	159 or 94.6%
Cropland --	49 or 29.1%
Timber --	2 or 1.1%
Other --	5 or 2.9%

"Other" responses: homesite; some wild hay; residence and pasture; mining; and hayland.

127% total response; (some respondents had more than one type of lease).

Question 2. Do you lease land from other sources?

168 total responses

Yes --	130 or 77.3%
No --	36 or 21.4%
No Response --	2 or 1.1%

If so, please check the lessor:

BLM --	79 or 60.7%
Forest Service --	30 or 23 %
Private --	87 or 66.9%

150.6% total response; (some respondents leased from more than one source).

Question 3a. Do you allow recreational use of your private land?

168 total responses

Yes --	131 or 77.9%
No --	33 or 19.6%
No Response --	3 or 1.7%

(Question 3a continued):

Other comments: on some areas; with some restrictions; hunting and fishing only; no camping or driving; moderate use; Jack rabbits are all we have; irrigated cropland not compatible; no recreational value; no one ever asked for any.*

Question 3b. Do you require recreationists to obtain permission before entering the land?

168 total responses

Yes -- 104 or 61.9%
No -- 36 or 21.4%
No Response -- 28 or 16.6% (some "no response" may be due to a negative response to question 3a.)

Other comments: on some areas; good hunter asks permission; usually for hunting; no fishing; if possible; only when livestock is in pasture, but no hunting, trapping or scaring animals; not at this time; might be a good idea; very few ask.*

Question 4a. Do you allow recreational use of your leased state land?

168 total responses

Yes -- 140 or 83.3%
No -- 23 or 13.6%
No Response -- 3 or 2.9%

Other comments: on some areas; with some restrictions; hunting and fishing; no camping or driving; moderate use.*

Question 4b. Do you require recreationists to obtain permission before entering the land?

168 total responses

*"Other" responses not included in percentage totals; they constitute comments in addition to above responses.

(Question 4b continued)

Yes -- 97 or 57.7%
No -- 50 or 29.7%
No Response -- 21 or 12.5% (some "no response" may be due to a negative response to question 4a.)

Other comments: on some areas; usually for hunting, not fishing; inconvenient to supervise; if possible; only when livestock in pasture; but no hunting, trapping or scaring animals; when access required crossing our private land; does not specify in lease.*

Question 5a. Do you allow recreationists to use land you may lease from other sources?

Of those responding "yes" to question 2 (total=130)

Yes -- 105 or 80.7%
No -- 25 or 19.2%

Other comments: only public; with some restrictions; hunting and fishing; no camping or driving; by permission; forest service manages own.*

Question 5b. Does your lease require you to allow recreational use?

Of 130 total responses

Yes -- 23 or 17.6%
No -- 95 or 73.0%
No Response -- 12 or 9.2%

Other comments: don't know; not on private leases; BLM-yes, private-no; does not specify in lease; except BLM.

Question 6a. Do you charge user or parking fees for the right to hunt or fish on your private or leased land?

168 total responses

*"Other" responses not included in percentage totals; they constitute comments in addition to above responses.

(Question 6a continued)

Yes -- 10 or 5.9%
No -- 157 or 93.4%
No Response -- 1 or .5%

Other comments: yes, for fishing and deer hunting.

Question 6b. If so, how much do you charge?

Amounts: $1.00 or under - 1
$1.00 - $5.00 -
$5.01 - $10.00 - 2
$Over $10.00 - 1

Other comments: $100 per person per week on private land only; none, but would like to; should be my right to charge if I want to; $25.00 per season; no charge, but continued abuse may change; $25.00 per season for out of state licenses; $10.00 for residents (about 1/3 are free), all fishing free; negotiable; varies according to length of time involved; only when furnish guide and vehicle.

Question 7. Have you had problems with recreationists causing damage to either your privately-owned land or your leased land? If so, please specify number of times and extent of damage on each type of land.

Of 168 total responses

Responses were broken down into the following categories:

Litter -- 35 or 20.8%
Open gates -- 70 or 41.6%
Livestock killed -- 30 or 17.8%
Damage to crops and pasture due to off-road vehicles -- 60 or 35.7%
Equipment damage -- 14 or 8.3%
Fences cut -- 50 or 29.7%
Fire hazard -- 6 or 3.5%
Thievery -- 14 or 8.3%
Shooting near buildings -- 7 or 4.1%
General vandalism -- 7 or 4.1%
Dogs chasing stock -- 3 or 1.7%
Tree cutting - 3 or 1.7%
Careless use of guns -- 3 or 1.7%
Poaching -- 2 or 1.1%
All others -- 4 or 2.3%
No damages -- 4 or 2.3%

(Many responded in more than one category.)

Question 8. If you do not open your privately owned or your leased land for recreation, what are your reasons for closing off this land?

168 total responses -- 63 or 37% responded to this question.

Recurring categories of response were:

Damage to livestock -- 17 or 10.1%
Damage to crops -- 3 or 1.7%
Off-road vehicle abuse -- 5 or 2.9%
Fences cut and gates left open -- 3 or 1.7%
Careless and dangerous use of firearms -- 3 or 1.7%
Fire danger -- 5 or 2.9%
Inadequate supervision by Fish and Game of hunters and of game; protection of diminishing game supply -- 5 or 2.9%
General vandalism and lack of courtesy - 21 or 12.5%
Land not suitable for recreation, especially hunting and fishing -- 6 or 3.5%
Other -- 5 or 2.9%

(Some respondents answered in more than one category.)
For additional comments see Exhibit A.

Question 9. If the state were to require that recreationists be allowed to use the state land you lease, under what conditions would this be most acceptable to you?

Of 168 total responses, the following alternatives were provided and checked accordingly:

Economic incentives -- 30 or 17.8%
User fees -- 27 or 16%
Relief from management responsibilities -- 37 or 22%
Relief from liability -- 88 or 52.3%

Other recurring responses:

By permission only -- 9 or 5.3%
If the state would be responsible for damages -- 6 or 3.5%
Under no conditions -- 6 or 3.5%
All others -- 27 or 16%
No response -- 18 or 10.7%

(Many had more than one response.)

Other comments: state be responsible for my losses - 2; land not good for recreational use - 2; management expenses on our terms; rental adjustments; needs some control over lands with cattle; recreational users

(Question 9 continued)

should pay for use; more responsible supervision; more supervision by Fish and Game; state maintain access; no people involved with private enterprise; state should place and maintain cattle guards; right to close land in extreme situations; restrictions for public safety; perhaps when cattle are not in pasture - 2; I don't understand question; recreationists should pay taxes to support their whims; if everyone can use the land, why lease; conditions would be under lessee management only; other land exchange; under my control; damage payed by state.

Question 10. How should recreational aspects of state land be managed if recreationists are allowed to use it?

Of 168 responses, the following alternatives were provided and checked accordingly:

By the State Land Department -- 30 or 17.2%
By the lessee only -- 88 or 52.3%
By the Fish and Game Department -- 4 or 2.3%
By a combination of the above -- 46 or 25%

Other comments:

Absolutely not Fish and Game -- 6 or 3.5%
No response -- 8 or 4.7%
All others -- 4 or 2.3%

(Some respondents checked more than one category.)

Other comments: by the lessee and local game warden; it's impossible to manage -- no one accepts responsibility; don't want more government.

Question 11. Is recreational use under proper management compatible with present operations?

A total of 150 responses were recorded for this question, or 89% of the total respondents replied to this question.

55 people, or 32% responded an unqualified "yes"
32 people, or 19% responded an unqualified "no"

(Question 11 continued)

4 people, or 2% responded "possibly"
2 people, or 1% responded "unlikely"
57 people or 33%, responded in some additional manner, elaborating on a simple yes or no response
18 people, or 10% did not respond

Recurring categories of "additional or elaborative" responses were:

Affirmative responses:

"Yes, but under proper management" needs to be better defined -- elusive concept - depends on what is meant by this concept.

Yes, if the lessee is allowed some measure of control

Yes, at certain times of the year or under certain conditions or on specifically regulated areas

Yes, with some incentives to the lessee

Yes, if livestock can be safeguarded (separated) from hunters

Yes, but proper management would be difficult and require more personnel

Negative responses:

No, impossible to keep cattle (livestock) and hunters separate; too much danger of stock being shot

No, land has no recreational value

No, unless the state will assume liability for losses

No, "proper management" is not possible

No, difficult to distinguish private form state-owned land for management purposes.

(For additional comments see Exhibit B)

Question 12. Under what conditions would you allow access across your privately-owned land in order to reach state, BLM, or Forest Service land?

(Question 12 continued)

132 responses were received, or 78.5% of total respondents replied to this question.

Of 168 total responses, recurring categories of response were:

For a fee -- 5 or 2%
If an established road to the public land already exists and people would stay on it -- 30 or 17%
Under no conditions -- 13 or 7%
With written permission of the private landowner only -- 8 or 4%
If the recreationist would make sure gates are closed behind him -- 5 or 2%
If the state were to install cattleguards (instead of gates) -- 3 or 1%
Only if traffic were restricted to foot or horseback -- 7 or 4%
If the recreationists generally respected the private property -- 14 or 8%
If the state were to assume liability for damages done -- 4 or 2%
If the private landowner can control who crosses and how, and where they cross his his land -- 39 or 23%
Only along fenced lanes -- 2 or 1%
With supervision of the recreationist by someone responsible for protecting the private property -- 2 or 1%
Not applicable to respondent's individual situation -- 10 or 5%
Through lease of right-of-way (easement) to management agency -- 4 or 2%
Other -- 6 or 3%
No response -- 36 or 21.4%

Because some respondents replied in more than one category, a total of 152 responses were tabulated in the above catagories.

(See Exhibit C for additional comments.)

Question 13. Have you or would you consider using the recreational resources of your private land as a means of supplementing your income?

Of 168 total responses

Yes -- 40 or 23.8%
No -- 90 or 53.5%
Not presently -- 22 or 13%
No response -- 4 or 2.3%
All other -- 12 or 7.1%

(See Exhibit D for additional comments.)

Exhibit A

8. If you do not open your privately owned or your leased land for recreation, what are your reasons for closing off this land?

I do not allow hunting anymore, because I've had too much trouble with hunters. I still allow fishermen to use our land.

Damages to crops and killing of livestock.

Littering, too many trails, and disturbing livestock.

If I lock the gates, it will be for the reasons of gates being left open, and too much litter left around.

My main thought would be for protection to my livestock.

To attempt to have some control over our property and livestock.

To protect our livestock and land.

Irresponsible attitude and destructive nature of the "recreationists" - and the danger to us and our livestock from their carelessly fired guns when "hunting".

Danger to livestock and fences.

Dumping old car bodies - danger of starting fires in timber.

If damage and vandalism cannot be controlled, our land must be closed simply for the protection of private property.

This is cropland and not for recreation.

Game is a great deal easier to put up with than hunters.

Damages to gates and livestock.

Too much fire danger during the dry season, and damage to our land with four-wheel drives.

They ruin the land, with roads and fire danger and careless with guns. I make a living raising livestock.

I let hunters in if they ask. If I did stop them from going in it is because of lack of respect of property and vandalism by a minority of hunters.

We graze over 4,000 cattle on the same lands with game. We feel that we must supervise hunting more adequately than Fish and Game will provide.

Because of the damage to the land by four-wheel drives, gates left open, fences cut, and stock caused to be stampeded.

Too many people shoot stock.

The complete area is closed to all wheeled vehicles during hunting season.

The disrespect of trespassers on both leased and private land.

So much stuff has been lost on our ranch, it is time something was done.

To protect livestock from gates being left open and cattle mixing.

Damages are too extensive.

We try to control who we let on, in order to be more careful with fires and other damages that may occur.

The lack of courteous responsibility.

It is located well within my ranch which consists of only prairie country - no game, no fishing, no camping etc.

I do not open land that I have cattle on -- my own or leased.

Harrassment of livestock, people and dogs and cars parked all over - cattle cannot even get to water because they are chased away.

Security and safety - mining operations are a hazard to persons not acquainted with the methods we use.

On private land I close hunting privileges whenever I feel it endangers my livestock and open it whenever the situation seems safe.

We do not close our land if the recreationists have written permission.

I close my land when it is dry and there is a real threat of prairie fires.

We allow all persons with enough courtesy to ask to utilize our land.

Private land closed because of fear of livestock getting shot by hunters; protection of the few remaining deer and elk; nonclosure of gates; public liability.

Too many damages to land and private property.

I wouldn't know who or why or what they are after if it was open to any and all people.

For the most part our private lands are open as they are intermingled with public lands. Some of our headquarter lands are posted because of livestock concentrations, etc.

We let hunters hunt except in areas where we have high concentrations of cattle.

It is private - that is a good enough reason. People are too abusive.

Fire danger is too high. I do open it for short periods of time.

This is not recreational type land.

We try to keep hunters out of the fields that we have cattle in.

Damages are too numerous to mention.

Too many damages to our land and property.

All our land is open to hunting and fishing, but upon Trout Creek, the gates are closed and locked and we have told hunters they can hunt but on foot or horseback - no vehicles. The Forest Service asked us to keep vehicles out going up to the forest up there.

I am too afraid of a suit.

The damages that are done.

If we close it, it will be because of too many people, and too much trash left behind.

I presently have my land open, but have considered closing the river area due to loss by theft near my corral and calving shed area.

Some areas are closed to vehicles, due to having to cross farm land for access.

We are closing hunting on our land because of lack of consideration and courtesy on the part of the hunters; also due to the dwindling deer population.

We allow some hunting but in the fall our cattle are usually on our land so we discourage hunters.

I have seen too much of what has happened to land that is left open to the public.

Hunting season is during roundup and I am concerned for the safety of my men, as well as my cattle. Other reasons for closing land are listed above, such as damage to stock, equipment, land, etc.

We may be forced to close our lands due to damages. Insufficient game due to predators.

The place is small and we need all the range for cattle and horses. Furthermore there is no game here. (Augusta, Montana)

Not that type land.

Since we pay the taxes we should control access - thereby being able to harvest a substantial yield of game and be able to avoid areas of cattle grazing.

There are plenty of parks and government land for recreation.

Weather conditions and the planted crop are the determining factors. We also don't like people demanding to hunt in our yard and shelterbelt trees.

All open except building site.

Exhibit B

11. Do you think recreational use of your leased land under proper management will be compatible with your present operations?

"Under Proper Management" is the key here - Answer to this is not in sight.

In certain areas, yes - in other areas, absolutely not.

With the exceptions of economic incentives, and relief from management responsibilities, yes.

Under no circumstances could recreationists be allowed into active mine areas. The chance of injury or death is much to great.

Yes. The lessee would have to have the say of when this land could be used without damage to the crops and livestock harrassment.

Not if cattle are on land grazing.

Only if the lessee has some say in the management.

No way this land could be used for recreational purpose.

Depends on what is proper management.

Yes, certain times of the year.

No way!! Impossible to segregate management of leased lands from private lands. The hunting season prior to our control by charging for trespass permit we had over one hundred hunters on the ranch opening day of deer season, and had close to one thousand hunters during the season. These conditions cannot possibly be safe or enjoyable for the sportsman, to say nothing of the devastating frustration it causes the rancher. We now charge $25.00 per person for a season trespass permit and limit the number of hunters on the ranch at any one time; we know who is camped where for emergency telephone calls and in the few cases of unsportsmanlike conduct we keep a black list, and have had two or three occasions to refuse individuals that have proved themselves to be undesirable in past years.

Yes, but I would like some incentive; usually I don't even get a "Thank-you".

Yes, if I am allowed to manage those aspects. If recreationists want to eat cheap beef in the future they better learn to get along with land owners and persons leasing land.

No. There will be people who have no respect for the land or cattle or ranchers.

The recreational use should be for a specific purpose. Hunting, or fishing such things as camping and picnicing and others should require special consideration.

Not for camping.

It is if limited to defined hunting periods. Year-round recreation is unacceptable (except fishing which is tolerable.)

Definitely not, unless state wants to be responsible for losses.

No - with our irrigation operations, there is too much machinery on the land to reach state land, along with dangerous ditches and floodgates people might mess with causing great damage. Also there are livestock all over the property.

No - because I don't feel proper management is possible.

No, because my amount of leased land is so small that it would cause trouble with privately owned land that is connected.

Stock is off leased land during hunting season.

I allow recreation use now with no vehicles allowed. Liability and damages to private property are the big problems.

Fishing and hunting is O'K. But a campground would be a problem.

Yes, but I doubt that proper management is possible. It requires a full-time person at ranch.

Hunting if properly managed.

As long as the lessee has the right to limit the number of people using the land at any given time, and screen the people asking to use leased land.

Hunting is the only recreation available and is allowed except when cattle are grazing in area or during summer months.

It could be if the management was adequate.

It would have lots of problems.

No recreational possibilities.

Depends on conditions. I do not want hunters in pastures where livestock are grazing.

With my permission.

Hunting and fishing - yes. Bike riding and camping - no.

Yes, it has been in the past and I see no reason that it would not in the future, except for the driving on cropland, and thievery.

With the right safeguards.

No, as I was hoping someday to be able to buy my state lease.

The present recreational use would be acceptable (meaning the use my leased lands get now).

Yes, if I had full control.

Yes, if there is no time loss or expenses involved because of recreational use of the land.

Yes, if properly coordinated.

Yes, if under proper management.

Recreational use of our leased state land occurs at present - if I am forced to open it, we've done our part. We'll close all private land.

With certain restrictions.

I don't think it has any recreational value.

Yes, under proper conditions.

Am under the impression that it is under "proper management" now.

Yes, (4)

No,(3)

Yes, we allow and have allowed said use with little conflict for many years.

It wouldn't be desirable.

It sits in the middle of the flat and I can't see any use except snowmobiling or shooting of gophers (which we don't like when horses are on it).

Only if recreationists are to travel on foot.

My land is unsuitable for recreation excepting picnics and limited hunting.

Yes, if controlled.

Only under certain conditions.

No - due to road maintenance and distribution of livestock.

I don't think we need it.

According to time of year when cattle are not being endangered or disturbed.

Exhibit C

12. Under what conditions would you allow recreationists to cross your privately owned land to reach state or BLM or Forest Service land?

Fifty dollar fee.

A county road runs right to the state land.

My state leases are surrounded by deeded land and because of the damage done I would prefer no vehicles be allowed.

To stay only on main traveled roads unless otherwise having consent from myself.

Keeping gates closed.

Not necessary to cross it.

If the BLM land was large enough to justify the damage done to the leased land; also only on a trial basis.

Just shut gates and keep going.

No conditions.

Under no conditions.

We would lease a right-of-way to the Forest Service or Fish and Game. We would maintain the right-of-way and fences but would want to be relieved of liability.

Only if convinced that the person was responsible and of enough character that my property would be protected.

Only with my permission.

Permission only.

I have none they have to cross.

Each individual who comes will have option of going in or not on with O'K from owner. Reason being that I like to know who's going in.

Our leased land borders a county road.

We manage state land with same care that we apply to private land. It is impossible to know when you are on which - no perimeter fencing defines most state land.

With permission of owner only.

It's location would not make it necessary.

Cattle guards be installed - follow road.

Stay on a marked trail and have cattle guards, instead of gates.

No crossing whatsoever.

As long as they treated me as they would like to be treated.

A fenced road made for access.

By foot or horseback.

Written or oral permission.

By written permission one month before anticipated use.

By asking permission and stating their name and address.

Stay on the road.

Stay off private trails when muddy. If damage is done require them to post a bond to cover grading.

Only if I am allowed to control traffic on leased land.

Stay on main roads and shut gates.

They keep their vehicles on the traveled road - close all gates - when there is livestock in the pasture or field, to refrain from use of firearms.

My control.

Under our present management program.

Use road only.

Stay on established roads.

On any traveled trail.

Closing all gates. No harrassment of livestock. No careless shooting of firearms. Heed signs. Keeping on established roadways and trails. No littering.

Written permission.

If they would respect the private property.

By established roads.

No conditions as far as I'm concerned as I have had too many problems with this. Perhaps a fenced lane along a line fence would work on certain individual ranches.

Conditions would probably be set by the company's principal officers, however, in an inactive mine area access could probably be provided.

Usually, if people obtain permission and seem responsible, we already allow this. People who have paid our fee, of course, receive this right.

That I were the judge as to where and when, or the state should maintain roads including cattle guards to their areas.

I would not allow it since they would make their own new trails across my land. They are irresponsible and do not police each other. We cannot afford to police them or guide them.

When there is a tightly fenced lane with no gates.

If they are to have a guaranteed right of access they should purchase right of way and maintain it.

I think I should know who and when and how these people cross and use my private land to obtain access to State Land and Forest Service Land.

With permission.

On foot or horseback, or use existing roads.

Under present conditions, where we do so voluntarily.

If recreationists would stay on the roads with their cars, and walk cross-country if no roads available.

With permission.

With restrictions on the amount of people crossing.

Only on roads that cross my land.

With permission and people of my choice only.

Under stringent right-of-way requirement - <u>with recourse for any damages</u> caused by an influx of vehicles crossing our private property.

That they identify themselves and ask permission - also that they cross at their own risk. The private property owner should not be liable for accidents, etc.

Walk or ride horseback.

No - it is easy to go around.

Permit only.

If they close gates and stay on road.

When rights of private land owner are properly protected and no damage or monetary loss results.

If there was no damage or inconvenience connected. Would you allow people to walk across your lawn if you lived in a city?

Stay on road with vehicle and then walk. Leave private property as is.

Where public roads allow them access, i.e. county, main roads. At my discretion as to when and if they may cross my privately owned and leased lands.

Written permission only.

You'll have a fight on your hands. People even misuse roads.

With permission only.

At any time the hunters will respect property both private and public by asking permission and behaving like adults.

For official reasons only.

Stay on roads that they are requested to.

To obtain permission.

By the present established roads.

With permission.

Well-traveled roads only.

Would depend on where livestock are located.

Respect my property.

By permission only.

Pay a set damage fee each time.

Roads all the way around. No reason for crossing.

To stay on roads and not be throwing litter all over.

Consideration of property and the cattle that graze there.

Stay on the roads.

By foot or horseback.

Under no conditions.

By written permission and they would be responsible for all damages.

On existing roads only.

Responsibility is the key word! Everyone wants the use of all resources, but no one but the land owner and stockman take the responsibility.

You have to cross ½ mile of cultivated hay land to reach the state lease. It is not feasible to allow vehicles to cross during summer.

They cross all land, with no regard to roads and almost no hunting is done on foot.

Depends upon the use made of the private land and who the recreationist is.

Where there is an established road.

Make sure all gates are closed.

They would have to get permission from me in each case.

Conditions that would not contribute to a loss of control of the private land or interfere with the proper use of this land.

I would allow specific individuals, in specific occasions to have access to the land, but I would never wittingly grant anyone a right-of- way.

Only if they stay on established roadways.

Come and ask.

Keep on the trail or roads already there, or walk.

Under no conditions.

As it is now with small numbers there is no problem; but if the populous gets roaming there could be like the rancher have over on the east side. Then I believe that a permit, fee or some stipulation would have to be used.

If they stop and ask permission.

As long as they don't cross through my farmyard and buildings.

We wouldn't.

Not in that situation.

They would have to be patrolled so they stayed on a road - Someone would have to be hired to close the gates when they went through. If cattle got on the highway some one would get killed.

Ask permission.

Written permission.
We have just granted an easement to the BLM in Madison Co. as has the state. This is the most desirable method.

Under bitter protest, if forced by law. Who would provide the constant patrolling necessary to keep people on established roads, and off my fee lands? Who would survey and establish boundaries and build fences and enforce hunting laws and respect for private property? Who would pay the damages incurred? The state?

At any time there was proper access to the land.

Recreationists keep on maintained roads.

Only if recreationists are to travel on foot.

Stop at the place and let us know who they are and what they intend to do while they're there.

It would require new roads which would kill out precious grass. I pay for the use of the state land and take care of it -- let the recreationists do likewise.

Not certain.

Only by permission.

Under no conditions.

Stay on service trails and take garbage with them.

Use only established trails.

With permission and stay on the road.

Only if came in and got permission and weather conditions were right.

By force and then only with guaranteed maintenance on fully fenced access roads.

With permission.

I would give them permission.

We have no BLM or Forest Service land near us.

Only to stay on the roads already there not to make any new ones. Not to knock down too much grass.

Permission only.

There is no way to control people unless someone has full time employee to guard.

Exhibit D

13. Have you or would you consider using the recreational resources of your private land as a means of supplementing your income?

We currently pay all the lease costs. If the recreationists want the use, let them pay also. It's about time someone paid me for the privilege of recreating on my land just like they pay to go to a ballgame. Why should I assume all the responsibility and expense for someone else's pleasure?

There is not enough game here of interest to go into supplementing our income. We let fishermen and hunters on our property in hopes they leave it in the condition they found it when they came.

Probably not. I don't feel the game animals that make their home on our farm are our property. They are there for the enjoyment of all, not just the landowner or lease operator.

As of now, no. But if ranching business doesn't improve I may have to consider it.

Only if it didn't interfere with getting my work done.

Could become necessary. Hope that other costs don't force this.

Not presently considered.

Yes, but the management of recreational resources is far too difficult to warrant the possible economic return.

Maybe.

It might be necessary if we are forced to. We have not done so in the past.

I never have and do not chose to do this.

I have not. Hard to make judgment as to what I would consider.

I have not done so to date, but seriously will consider it in the future.

Possibly, though our operation would be hard to manage in that way.

I have not considered charging for these privileges.

Not under present conditions.

Yes, as you can see we are changing a fee however, at this point the fee does nothing more than reimburse us for the cost of management, and short of opening up a dude ranch I doubt that the fee would ever cover anymore than the cost of the program.

The only way I would charge is if Mr. Meaney and President Ford keep insisting the farmers and ranchers must sell their products for 50% of cost of production. (We won't have any choice.)

Not at the present time.

I haven't but would consider it.

If necessary to keep ranch going I would consider any legal remunerative procedure to pay the bills.

We presently operate a recreational facility on our ranch and it is our primary source of income.

Have considered doing this, but too much of a headache.

No, the land is too steep for recreational use other than hunting.

Not at this time.

I have and do. I am also an outfitter.

Not at this time and never have.

I have considered charging for hunting and other privileges.

I don't think it is worth the problems that would be encountered.

No - there is not game here to support such a plan.

Not at this time - not enough fish and game to justify the payment of a fee.

Have had thoughts about it.

Recreation can be allowed, if left to lessee. To decide when and how much according to whether livestock are in pasture.

Of course -- the attitude of those leasing these rights is 100% better than those people who trespass -- the people who pay for the priviledge of hunting on nonforest lower lands are appreciative of their paid for rights and protective of land.

Exhibit E

14. Other comments:

I have never charged up to now, but if I am bothered with hunters like this past fall when we are busy gathering cattle, shipping and weaning calves, I will have to charge.

They want to hunt where I ask them, not to run through cows and calves, shoot signs and tear them down. If the recreational forces are going to take over, it will be fine when the Communists get the rest of our country.

I feel that a multiple type program would be satisfactory on state land. But there should be some curtailment involved pertaining to everyone's viewpoint.

Most of these questions cannot be adequately answered by "yes" or "no" and a study based on those answers will be of little value.

There's too many hunters for the number of game animals and the size of area hunted. The hunting season is too long.

When a person leases property from private individuals he should have the right to control the surface. The leasor, when he leases out property, is selling the use of the surface to the leasee for a specified length of time and for a certain fee. This should be the same when leasing from the state.

We have allowed hunting on our property until this year and it was closed because there was not enough game left to warrant opening it. Our ranch includes private land along with State and B.N. leases. The land is managed as an entire unit and of course the leased land is not fenced separately. We will allow hunting again next year if we have any game. Most hunters are true sportsmen and give no trouble, however, there is always the minority that abuse the privilege. I'm sure that if access is forced across private land to state land that the recreationists will be defeating their own purpose as I'm sure that the private lands will be closed.

The state land that we lease would have only one recreational value, if any, and that would be hunting. For several years we allowed hunters to come in and hunt, but they ignored all "No Trespassing" signs on adjacent lands, even going so far as to tear off the signs and enter, or break off fence posts, lay the fences down and drive over them, going wherever they felt like. Even shooting in the direction of our buildings. Therefore we now do not allow any hunting in this area - it isn't safe. We feel that if we are leasing the land, and paying for it, that we are the ones who should determine who enters upon it, and for what reasons, and not have "recreationists" forced on us by the Legislature.

My basic philosophy regarding this subject is: It costs a great deal of money and labor to maintain a piece of private property these days. If the public wants to share in the benefits of that property then they should start bearing some of the responsibility towards maintaining it by paying user fees.

The big problem in hunting season, is people with high-powered rifles hunting in these small areas, making it unsafe for man or livestock.

This ranch has never denied access to recreationists since I can remember (30 years) even though the property damage and theft has sometimes been staggering. This year we had a bridge blasted and the road it served blasted in three locations such that it is impassable and requires heavy equipment to repair. We rebuilt the bridge with a new bridge only to have it burned less than two weeks later. The Sheriff's office, game wardens and ourselves can only speculate what the motive was but it obviously concerns hunters and hunting access which we have tried very hard to provide. And, of course, every year there are gates left open and fences cut which results in several man days labor to gather livestock which mixes with neighbors and with our own various classes of livestock. This year a four-year old dry cow died suddenly and suspiciously within within 50 yards of a county road in an unnatural position which leads us to believe she was shot. A young purebred bull died under similar circumstances. We have a cow camp cabin on the Forest that is damaged and left messed up each year even though we have never locked it or denied anyone who asked permission to use it. This year someone broke the door down and left their garbage on the floor. Another cabin on private land was locked and someone broke into it and took the groceries and furniture, consisting of several chairs, two tables and three beds. I am opposed to the State's guaranteeing anyone access to its leased land or across private land because so many of these people cannot be trusted with this right. If the State chooses this course of action it should also assume the liability for the damage done as a result of such access. Would the State be willing to pick up the tab for this much property damage and theft??? The landowner and lessee is now!!

No hunting among my stock anytime anywhere.

If the regulations allow access across private land without lessee permission then it would circumvent any protection the land owner or lessee has with trespass enforcement.

The Indian Butte Grazing District has 25,000 acres they own with 11,000 state, BLM - 100,000 all intermingled, large areas are no problem.

Our main worry of hunters is fire -- if the season could be shortened, there would be a lot less fire hazard.

We have very little trouble with trespassers on state land.

Provisions must be made to prevent access in times of high fire danger.

Recreational use is not a serious problem if sensibly administered.

The recreational user must be held responsible for any loss caused by his use of the land. Referring to loss of livestock, damage to soil, crops or grass and property as fences, etc.

If recreationists cause damage, such as fire, lease fee should be adjusted for loss of grazing. Lessee should be free of any liability of any kind on this land.

I think state lands should have 100% of the say - not fish and game.

It may be necessary for ranches to charge, due to the economic situation we are in.

Recreationists will not take care of the land.

I require everyone who hunts to get permission. I cannot afford the risk of having unknown persons with guns among the cattle. It is to the advantage of the hunter that he check in and have permission to hunt, for by this arrangement the hunter is not a trespasser when he crosses boundaries between leased and privately owned land. A few hunters ask for hunting on leased land but we explain the fallacy of this. It is enough challenge to explain to the hunter the area he can hunt, without tracing out for him leased land boundaries which the game does not observe at all! We have never refused permission to a hunter.

It is the state's land and if you want hunters to drive across planted wheat and destroy crop yield, it is up to state land departme

The problem with hunters is serious, and the problem with floaters on the river is constant (litter) and dangerous (unattended fires.)

A law that would force public access to lands would probably result in the closure of most of the private lands to hunting or any other recreation in this area.

Most of the recreation use here is hunting and hunters can be very overbearing sometimes. The problem is not who owns the land or fee paid or permission or what ever, but the attitude of the hunters. Some are good, but most end up causing some sort of trouble. I'd be opposed to any program giving blanket permission to enter state land. Perhaps if a fee were paid and at time of paying fee farmer or rancher could select or choose or at least control the number of hunters and also know who is hunting. Most of us are not opposed to recreational use of the land - just the abuse we've taken over the years.

For many years we never locked our doors. Today such an act would be disastrous. I am against the kind of people we have using our land and hunting not the idea itself. But the way it is I can't afford to let the people have unlimited access to my place.

I allow anyone to fish on my land and hunt ducks down here in the valley, if they come and get permission.

We don't have enough state land to create many problems, but many do, as ranch operators, we should have the right to select persons using these lands for recreational purposes. Some people destroy property and some enjoy the privileges.

I have had some sad experiences with hunters and fishermen. Only a few are not considerate of property but those few can cause plenty of damage. We realize that game animals can be too numerous and it can be lessened by hunters.

The fire hazard in dry season is enormous. A later season would help in most years. Also a shorter season including some consecutive weekends would be much better for the rancher and it would still give most people a chance to hunt.

We need more game wardens or other enforcement personnel to regulate the people during hunting season, and the rest of the year also as to game counts and hunting management. By this I mean to designate the hunting season more by the game. Population in a given area by the abundance of deer or antelope in the area, like our place. We have lots of antelope, but the deer have been overhunted. My neighbors post their land and allow very few in to hunt. While we hardly ever refuse anyone that asks so we get a lot of hunters. We would like more cooperation from Fish and Game to close the area sooner if the hunters get too many out.

My private land is for beauty and a future homesite for my two boys if they want it. I would give up my state lease before I would let someone cross my private land to get to my lease. However, it is possible to get to my state lease without going through my private land, but by going in back of my private land on ACM land. As I said before, I was hoping to be able to someday purchase my state lease, that is why I kept it after mother passed on.

About 75% of recreationists who enter my ranch are local people and all of them ask permission. I have only one requirement of them that they report any gates open, sick cows or anything unusual. I believe they have done more good than harm, but it is that one small percent that raises hell with your disposition.

Key to public use of these lands is that visitors be "responsible". His presence places a burden on private land owners (lessee). Some way of remumeration should be calculated. Fee schedules on leased lands might be an avenue to explore. Recreation users if he was required to pay small user fee might tend to be more responsible.

Recreation use decreases the value of state land. If used by recreationist, grazing fees should be lowered to compensate for damage and inconvenience and recreationists should pay the difference. Access should not be required to small isolated tracts of state land. As state land man told me once about selling state lands -- we sell nuisance value, not land value.

The public is offended when people charge for recreational privileges - they feel the use of all land is a God-given right. When the

situation evolves so that the public has rights to use all land (which they will attain through sheer numbers) there will be no conflict. There will also be horrendous problems because "bureaucrati" management is not as effective or as concentrated as private management. The problem is impossible to legislate. The interests of private landowners and the interests of non-landowners will never both be served by any bill passed by a State Legislature. We try to view this situation with compassion, compromise and the "Love thy neighbor" philosophy. The only problem is every time we give an inch, we get clobbered. State legislators would do well to preserve the rights of private landowners - since primary producers are the backbone of this wonderful economic system that has created affluence. If the legislature forces public access to publicly owned lands the major burdens will be borne by ranchers. To compensate for this burden, the government must provide for the following: (1) Public maintenance of all roads to government lands - why should the private landowner have to maintain public roads? (2) Identification of all public lands (maps, signs, etc.) - how will the public know the land is available to them? (3) Compensation for use of private lands for access - includes damages and a fixed fee for crossing. This should cost several billion dollars to be done right. If you have the funds go ahead - but it might be "politically unwise" to pass an increase in property taxes to finance it.

When a lessee pays his lease his obligation is to care for the land in a husbandry like manner. We're not obligated to put up with a bunch of people who are not of our choice and who are not directly responsible to us for their conduct. It's just fine for the Legislature to pass laws as long as they don't have to accept responsibility for the trouble they cause others: in this case, the lessee of state land.

Let us not forget that school lands are for the support of schools and if recreation jeopordizes the amount of income it produces then we have a mandate to curtail that use. School lands vary from Forest Service or BLM that should come under multiple use school lands must be managed to produce the most income regardless of what that use may be. I'm also opposed to hunt for pay as the people who can least afford are eliminated from use. Mainly you folks who cannot afford guides, four-wheel drives and have the most times had no place available to hunt when "hunt for pay" is involved. In these days of drugs, fast automobiles and etc., hunting affords an opportunity to these young folks to burn up energy harmlessly.

I have answered the yes and no questions as to how we operate our private land, state leased land and other leased land under our control by virtue of permit or lease. Questions 9, 10, 11, 12 will need explanation. For one who allows access to recreation on state land the value to the public should be realized by the public (the trust fund) through some kind of multiple use policy that does not put the full burden on the lessee for agricultural purposes (for which it is leased). Further some recognition of the multiple use should be realized by the landowner who allows recreation activities on his own land (which would in most cases necessarily follow). These would be, in a sense, incentives which the questions address. The real question is No. 12 which, as I understand, is the point of the whole investigation; should public access across private land be

a condition to receiving a state land lease. The answer is no - unless there is a clear indication of public necessity that would stand up in court under the laws of Eminent Domain. There have been, and still are, pressures to break down the historical concept of private ownership of land. State land is widely scattered throughout the state and the lessees for agricultural purposes are many and diverse. To attempt to meet all the separate incentives of Question 9 would be a nightmare to administer and if a majority were to take a course not agreeable to any minority it would amount to confiscation of a property right without due process.

I feel that recreationists should not be given too much freedom and privileges when crossing private land to gain access to state or forest lands as I think it is humanly natural that they would lose some respect for a landowner's privileges and privacy if given too much authority in this respect. On the other hand I feel that these people should be given some rights so they can enjoy these public lands but there should be some rigid rules, for them to follow when using private land, that are blended to be palatible to the landowner and the people wishing access to public land over private land. I think the forest, or state land, or BLM people should be required to help enforce such rules and if the landowner gives consent, to such use of his land, he should always be respected as the owner of the land.

We have 4½ sections of state school land between Red Lodge and Roscoe along North slope of the Beartooths. We permit hunting on our land and access and hunting on state land except where livestock are present. Livestock are out of lease by Big Game Season. We also allow snowmobile use of same areas, but I frown on hunters on snowmobiles. Most damage done by hunters who get stuck or nearly so in our private property on their way to or from state land. I would not want to grant a guaranteed access to state land over my deeded land because if hunters etc., had the right of access their attitude and relationship toward landowners would be much different. Problems would multiply. I would have a very difficult time preventing theft of livestock if recreationists had access right during grazing season although I do now grant that access occasionally.

The state has too many small and isolated areas, that I could make as much money as they would in private ownership. Also allowed trespassing on large areas of private land to reach small plots of state land. This can create many problems. The general public has no way of knowing when they are on public or private land (excepting large forest areas). So they always have a legal excuse for being where they are no matter how much damage they may be unknowingly doing to private land. Last, but most important, there definitely is a trend by many individuals and groups to do away with private control and for that matter private ownership of anything. When that day comes the State of Montana and the U.S. both become just another portion of the United Socialist States of the World. A very sad day indeed.

I again emphasize that some leased land is too near homes, is in very heavy use with cattle concentrated for shipping, weaning, etc, or is being worked or tilled during the hunting season, so the

leaseholder must have the right to close all or parts of leased lands during various hunting seasons. For instance, fishing might be in order, or shotgunning, but not high-powered rifle use. Also, I do not believe that the state or federal government can require access across my private lands without condemnation and just compensation, even as a condition of receiving a lease, and would vehemently resist any attempt to make this law.

The use of recreational areas does not generally interfere with our mining operations so long as people are restricted to inactive mine property or can in some way be segregated from those areas where they might be injured. Our mining company has attempted to cooperate with the public and the public's right to use "trust" category lands and will continue to do so if at all possible. Our concern is for public safety and the security precautions which are prudent for protection of the machines and facilities.

The recreationist the hunter and the trespasser have become a big problem in our area in the past ten years. There are too many people, horses and dogs and there is no respect for private property, crops or livestock. This situation has to be strictly controlled or there is no use of owning or leasing any property. The hunter, recreationist and others should never be allowed to interfere with a man's livestock or crops. These lands should be used for only recreation only or under strict control if leased for crops and grazing

Nine of every ten people who trespass do not ask permission or give any notification. I sincerely appreciate the one person who does ask permission because I feel that he will also show responsibility in use of the land. I will be available at any time and I would appreciate the opportunity to help in any way possible toward a solution to this problem.

In my opinion independent management of state lands for recreationists in areas where there is a state section only every four or five miles would bring about utter chaos for both the state of Montana and the rancher.

Until the Montana Fish and Game Commission decides to accept the fact that fee hunting is the best means of control and decides to work toward cooperation with the land owners and land lessees, there will continue to be problems. I realize there are problems with state and federal lands. However, to date they have refused to accept fee hunting or to investigate other states who have fee hunting to see how well it is accepted and working. The Fish and Game should realize that with fee hunting they have made a conservationi out of the land owner. He will help to protect and care for the game. Now they are just a detriment that is the cause of lots of unnecessary problems. Land owners operating in high game populated areas are out a lot of expense. If they did not have to carry on the forage they produce, so much game they could run more units of livestock. This should be kept in mind. My operation happens to be where antelope are more than plenty and I have told the Fish and Game I would like them to trap some and move them out to other areas not so populated. I hope this can be worked out.

I allow anyone to use the ranch (private and leased) for recreational activities but people act as if they own the land. People think that because the leased land belongs to the state, they are entitled to all the privileges the lessee is entitled to. I, the lessee, pay for the use of the land. Granted, I would shudder to think of losing the leases, as they are essential to the continuation of the ranch operation. I ask only that people be more considerate to me and the land.

In my location the only recreation request is hunting and most all responsible hunters are granted permission. I cannot see how the state, BLM, Fish and Game or anyone else other than the person leasing the land would know when the land would be available to recreationists. If I rotate pasture usage as G. Plains calls for I would be grazing this pasture at a different time every year. I spend a great deal of time each fall patrolling my ranch watching for fires. Most of us are in financial trouble now, and it would be a disaster if my winter graze was destroyed by fire. I have caught hunters smoking, drinking, eating, throwing out garbage right in my hay lots where all my winter hay was stacked. Fortunately so far we have not had a fire.

When the majority of the people would rather play than work at the expense of the taxpayers, then the country will be in big trouble. That time is coming on like a Northern snow storm.

In June of 1971 I started a proposed land exchange between state, BLM, Fish and Game environmentalists, etc. whereby Ox Box Ranch Company would trade about five miles of water frontage land immediately north of the Gates of the Mountains to include the Ox Bow Bend. Also our portion of the Sleeping Giant Mountain. At the present time the appraisers as well as BLM officials, state land commissioners, are making a genuine effort to complete this transaction.

We have high quality stream and wildlife lands which have been managed in cooperation with Fish and Game for 30 years. State land is entirely in isolated sections surrounded by deeded land. It is impossible to manage these sections separately. In 1975 we charged elk hunters for the first time because we were advised to harvest more elk and it would require hired range supervisors to control the activities of these hunters. For many years we employed supervisors and charged nothing, but that era has ended so far as I am concerned. In recent years we have accommodated over 350 hunters per season. Fishing is not a serious problem but trash and fence destruction accumulates each year. I shall be very happy to discuss any part of our plan for game management with you at any time.

For several years we allowed anyone who wanted to to hunt on our land. However, because the deer hunting is very good on our land and one can drive over a lot of it, the hunting seasons became a mad house as more and more people came and more damage was done every year. When the law went into effect requiring permission to hunt, we closed the ranch to hunting. I do, however, let the hired men, a few

friends and members of my family hunt. But, there are always a few others who sneak on and when confronted, say, "I thought I was on so and so's land" or "That fellow in the blue pickup said I could hunt here." As to the crux of your questionnaire, I don't see how people could use the state lands we lease without inadvertently getting on the private land as the state lands are not fenced separately so how would they know where they were. I foresee a great deal of trouble in the implementation of access by the public to the state lands which I lease.

We want to protect what little game we have and feel that the land owner is best suited to do it.

Polite, respectful people who use care at all times are welcome, the other kind we could do without.

Allowing free access to my ranch by recreationists could cause enough problems to force me out of the ranching business, which is difficult enough as it is.

Best keep Fish and Game out of this and make it simple and inexpensive.

I am sure happy that the legislature isn't in session this winter where we have to go through the agony of you people taking more of our freedom away.

The only form of recreation on our private and leased land is deer hunting, and there aren't any deer to hunt.

I think it is about time the elected officials start thinking of the farmer and the rancher. They are the only ones in this country that do a day's work.

My land is quite different from most land, as it is not in one section but separated, so my problem would be quite different than most farms.

It is apparent that recreational uses must become compatible with grazi and farming utilization on state-owned land. However, as the landowner and state land lessee grant recreational use to the public in general, that general public must reciprocate by respecting the land-owners righ and property. This is sadly often not the case. If the public insists on disrespect for property and privacy, stiff resistance will be the standard in any attempt to convince land owners and lessees to cooperat. Mining, timber, farming, and grazing interests are required to pay a fee to utilize state lands. It would seem both inconsistent and inequitable to give recreational interests either a priority or a free ticket in their use of state lands. This is especially true of endowment lands which are in existance to fund education, not to provid a haven on Sunday afternoon. For a nation that spends massive amounts of money on manifold recreational pursuits a little of that money for education should not be too much to ask. Although not anti- Fish and Game, I have grave doubts of their abilities to handle their present affairs properly. I most definitely don't need them administering eith my state lease or private real property. They don't have a realistic approach.

If we were required to let people use state land for recreation we would have to have some type of compensation. We are responsible for the crops which are grown on the state land strictly for income purposes for ourselves and the state of Montana. After all making money is what we are in business for. If there are crop losses due to recreational uses we lose income and so does the state and we feel that the users should pay for this. After all if a man rents a house in town, just because he doesn't own it, I don't have any right to picnic on his front lawn for free any time I please. At the present we are not hardnosed about letting people hunt on our own land or the state land, but if mandatory recreational use of state land is thrust upon us we are liable to close our private land permanently.

Some of the hunters might be hunting deer or birds and they will kill any other animal they see just for what they call sport. We have butchered our beef and found shot gun pellets in the meat also we heard rifle bullets near us. If hunting is ever permitted on all state land I think permits should be required and the lease holder should know in advance who is issued a permit. In my area there has been times during deer season that it was dangerous to gather cattle with too many hunters at one time and we did not even know who they all were.

Please take into consideration that we are paying for the use of this land and should be able to control access to the land as long as we meet terms of the lease.

Until the public starts having respect for the private property owner, I don't think anything like this will be very successful.

Fish and Game need to resort to better management practices, so that game birds and animals will better hold their numbers. We favor a permit system to deer and antelope hunting in my area (Conrad) - it is rather easy to hunt and is overhunted causing damage to pasture and crop - makes the hunting public turn your ranch into a free for all. That is the ones getting there first get the game.

Fish and Game should use more permit systems and shoot only male species -- this goes for birds too. Then our game population would have a chance to hold up. They should declare the coyote and Marias River hawks game birds and animals. They would be cleaned out. (Put in the fox and skunk and porcupine for extra game animals.)

I allow all antelope and deer hunting that the population will stand by permission.

If leave gates open, will start charging fees.

There are plenty of government, BLM, Fish and Wildlife without private land for recreation -- too much recreation don't pay any for those that get welfare and food stamps, and don't want to work and won't as long as we will feed them and buy their drinks.

APPENDIX F

Montana Legislative Council

State Capitol
Helena, 59601

April 27, 1976

TO: Interested Persons and Organizations

FROM: Deborah Schmidt, Legislative Researcher DBS
Subcommittee on Agricultural Lands

RE: Public Access to Public Lands -- Public Hearing May 15 -- Yogo Inn, Lewistown

The legislative Subcommittee on Agricultural Lands will hold a statewide public hearing on the subject of public access for recreation to state and federal public lands on Saturday, May 15. The hearing will begin at 9:30 a.m. at the Yogo Inn in Lewistown. This hearing will constitute the primary opportunity for you to provide information on this subject to the subcommittee, and the location of the meeting in Lewistown was chosen because of its central location to the citizens who may wish to participate. This memorandum will serve as a brief description of the subcommittee's assignment, its progress on the study to date, and most importantly -- an outline of the kinds of information it needs from you to complete the study and find workable solutions to the problem of public access to public lands for all those concerned.

Background of the Study

The Subcommittee on Agricultural Lands is composed of the following legislators: Senator Carroll Graham, Chairman (D-Lodge Grass); Senator Elmer Flynn (D-Missoula); Senator Jack Galt (R-Martinsdale); Senator George Roskie (R-Great Falls); Representative

Verner Bertelsen, Vice-chairman (R-Ovando); Representative Fred Barrett (R-Lewistown); Representative James Fleming (D-Pablo); and Representative Al Luebeck (D-Butte).

The subcommittee was assigned to study the scope and possible solutions to the problem of public access to public and private land and waters, including fishing and hunting access, during the 1975-1977 legislative interim. The assignment of the study arose as a result of the introduction of at least five bills and resolutions on the subject of access to public land during the 1975 legislative session. Those bills and resolutions included:

(1) House Joint Resolution No. 29 requesting a study of the problems of access; (2) House Bill No. 43 prohibiting fees for fishing rights on federal and state lands; (3) House Bill No. 98, concerning recreational use of state land and the right of access; (4) House Bill No. 79 concerning recreational use of waters; and (5) Senate Joint Resolution No. 26 concerning fishing access to public lands.

Study Progress

The subcommittee has held two informational meetings to date, and has focused primarily on recreational use of state school trust land. Despite its relatively small (approximately 5%) land area in relation to the total acreage of land in Montana and to the amount of federal land (approximately 29.6%), recreational use of state land is perhaps the most controversial of all the public access questions. The subcommittee has found that because of the special provisions under which state school trust land was given to the state of Montana on its admission to the Union by the federal government, this land must be distinguished in management and in the public's mind from other public domain land. (Mr. Leo Berry, Acting Commissioner of State Lands, will attend the hearing and elaborate on this finding.) Providing a continued source of income to the school trust fund must be a fundamental concern in any solution to

the problem of public recreational use of and access to state lands, according to the subcommittee's conclusions.

Presently, there is no clear policy for recreational use of state land; the State Land Department has left the decision of use and access to state land up to the lessee of a particular parcel. To try to determine the attitudes and problems of state land lessees in regard to public use of their leased land and private land, the subcommittee conducted an extensive survey of 300 lessees. 56% of the lessees responded, a strong percentage, showing the extent of concern to the problem of recreational use of state, federal, and private land. The results of this survey will be available to you at the hearing, but some of the significant information gained from the survey includes:

(1) 77.9% of those responding to the questionnaire allow recreational use of their private land, and 61.9% require their permission to be obtained before entering the land;

(2) 83.3% of the respondents allow recreational use of their state leased land, and 57.7% require their permission to be obtained before entering the land;

(3) Nearly all respondents reported damages to their property as a result of pulic recreational use of their private or leased land. The three most common types of damage were:

(a) Gates left open -- 41.6%

(b) Damage to crops and pasture due to off-road vehicles -- 35.7%

(c) Fences cut -- 29.7%;

(4) If the state were to require that recreationists be allowed to use state land, responding lessees felt that certain conditions would have to be met. The most frequently cited were:

(a) Relief from liability -- 52%

(b) Relief from management responsibility -- 22%

(c) Economic incentives -- 17.8%

(d) User fees -- 27 or 16%;

(5) Respondents to the questionnaire felt that recreational use of state land should be managed by:

(a) The lessee only -- 52.3%

(b) The State Land Department -- 17.2%

(c) The Fish and Game Department -- 2.3%

(d) A combination of the above -- 25%;

(6) When asked under what conditions the lessees would allow access across their privately-owned land in order to reach state, BLM, or Forest Service land, two responses were most often expressed:

(a) If the private landowner can control who crosses, and how, and where they cross his land,

(b) If an established road to the public land already exists, and people would stay on it.

The subcommittee has followed closely the progress of the state lands recreation inventory conducted by the Department of State Lands. This inventory is being made to determine the recreational development potential of school trust land. An alternative for recreational use of state land would be to open public recreation on only those lands that have a high recreation potential, rather than on absolutely all school trust lands. The subcommittee asked the Department of State Lands to tabulate how many of the highly-valued (for recreation) state parcels of land had existing public access or access within a reasonably short distance. The Department determined that 40.3% of the inventoried parcels were readily accessible; 14.7% had access within 1/2 mile; and 44.8% had access within one mile. Thus all but .4% of the parcels were accessible within one mile.

In moving beyond the question of access to state-owned land, the subcommittee has determined that one of the fundamental problems contributing to the overall access situation is lack of accurate information for the public and for land management agencies as to where access problems exist. To help alleviate this problem, the subcommittee has instituted a pilot program, coordinated by the

Department of State Lands, which would identify through the use of a computer digitizing process the land ownership, access, and recreational value of the land area of the state. The project will begin with two counties, Custer and Beaverhead, and will be continued statewide if it proves useful. The mapping program will include information on federal, (BLM, Forest Service, Bankhead-Jones, etc.) state, and private land.

The subcommittee has reviewed the legal remedies available to those wishing to gain access and has discussed briefly the problem of inaccurate information with regard to county road ownership and right-of-way.

Information Needed at the Public Hearing

At this point in its study, the subcommittee needs concrete information on the following questions from you and your organization in order to arrive at possible solutions to the problem of public access to public land and water in Montana.

I. What is the extent of the access problem?
   - A. Where is public access to public land being denied?
   - B. Is access being denied to any particular group (e.g., out-of-state hunters, motorcyclists, etc.)?
   - C. Is public access denied at any particular time of year?
   - D. Are access fees charged?
     1. Under what circumstances?
     2. By whom?
   - E. Is good access information (e.g., maps) a problem?

II. What are specific problems the landowner has?
   - A. Does any particular group cause special property damage?
   - B. Why do landowners close their land?
   - C. Do landowners want existing public access roads to public lands closed or abandoned?
     1. If so, why?

III. What are some specific possible solutions to the problem?

A. What kind of access is needed? For all vehicles, horses, snowmobiles, or foot travel?

B. If counties find it too expensive to maintain roads, will maintaining right-of-way be sufficient?

C. How can the landowner-sportsmen conflict be resolved? How can both groups progress beyond the "accusation stage" to good solutions?

D. What are you and your group willing to do to help improve the bad effects of open access/closed access?

E. What do the land management agencies need to do to improve the access situation (BLM, Forest Service, Fish & Game, Department of State Lands)?

F. What would you like to see this subcommittee and the legislature do to resolve this conflict?

These are some of the areas that the subcommittee would like you to address in your testimony. The subcommittee is aware that the subject of public access to public land and to private land for various types of recreation has been one of great controversy and bad feelings in the past. The subcommittee would like to move beyond this past history in this forthcoming hearing and encourages you to offer constructive solutions to the problems you have experienced.

The subcommittee requests that you submit written testimony even if you will be testifying in person at the May 15 hearing. If you are to appear at the hearing with a group, it would be helpful if you would select a spokesperson for your group in order to avoid repetition. If you are unable to attend the hearing, you are invited to submit testimony in writing by May 21 to:

Subcommittee on Agricultural Lands
c/o Legislative Council
Capitol Station
Helena, Montana 59601 (449-3064)

Chairman Graham will set guidelines for the hearing at the beginning of the meeting. The subcommittee thanks you for your interest and looks forward to your testimony. If you have any questions about the hearing or need further information, please contact Bob Person, Director of Research, Legislative Council at the above address.

APPENDIX G
SUBCOMMITTEE ON AGRICULTURAL LANDS

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Mr. John Delano
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7 Edwards
Helena, Montana 59601

Rep. Lloyd Lockrem
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Senator Harold C. Nelson
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Cut Bank, Montana 59427

Environmental Information Center
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Rep. John Vincent
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Rep. Herb Huennekens
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Rep. Dorothy Bradley
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Boxton, Massachusetts

Ms. Cleo Baker
PEPS Committee of MEA
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Missoula, Montana 59801

Jim Cook
USFS
Federal Building
Missoula, Montana 59801

APPENDIX H

SUBCOMMITTEE ON AGRICULTURAL LANDS
PUBLIC HEARING, YOGO INN, LEWISTOWN, MONTANA
May 15, 1976

The Subcommittee on Agricultural Lands met for a public hearing in Lewistown, Montana, on May 15, 1976. Members of the subcommittee present at the hearing were Senators Carroll Graham, Elmer Flynn, Jack Galt and George Roskie; and Representatives Fred Barrett and Al Luebeck. Representatives Bertelsen and Fleming were excused. Also present were Mr. Leo Berry, Acting Director of the Department of State Lands; Bob Person, Director of Research, Legislative Council; and members of the press. Eighty-eight interested persons registered at the hearing.

Chairman Graham called the meeting to order at 9:45 a.m. He welcomed the participants to the hearing and introduced members of the subcommittee. He went on to explain the purpose of the hearing, why it came about, and the work of the subcommittee up to this point. He pointed out that the subcommittee was assigned to study the scope and possible solutions of the problem of public access to public and private lands and waters, including fishing and hunting, during the 1975-77 legislative interim. The assignment arose as a result of introduction of at least five bills and resolutions on the subject of access to public lands during the 1975 legislative session. Those bills and resolutions included HJR No. 29, requesting a study of the problems of access; HB No. 43, prohibiting fees for fishing rights on federal and state lands; HB 98, concerning recreational use of state land and the right of access; HB No. 79, concerning recreational use of waters; and SJR No. 26, concerning fishing access to public lands.

The subcommittee has held two informational meetings to date, and has focused primarily on recreational use of state school trust land. The subcommittee has found that because of the special provisions under which state school trust land was given to the state of Montana on its admission to the Union by the federal government, this land must be distinguished in management and in the public's mind from other public domain land. Providing a continued source of income to the school trust fund must be a fundamental concern in any solution to the problem of public recreational use of and access to state lands, according to the subcommittee's conclusions.

Presently there is no clear policy for recreational use of state land; the Department of State Lands has left the decision of use and access to state land up to the lessee of a particular parcel. To try to determine the attitudes and problems of state land lessees in regard to public use of their leased land and private land, the subcommittee conducted an extensive survey of 300 lessees. Fifty-six percent of the lessees responded, a strong percentage, showing the extent of concern regarding the problem of recreational use of state, federal, and private land. The results of this survey are available to you here.

The subcommittee has determined that one of the fundamental problems contributing to the overall access situation is lack of accurate information for the public and for land management agencies as to where access problems exist. To help alleviate this problem, the subcommittee has instituted a pilot program coordinated by the Department of State Lands, which would identify through the use of a computer digitizing process the land ownership, access, and recreational value of the land area of the state. The project will begin with two counties, Custer and Beaverhead, and will be continued statewide if it proves useful.

The subcommittee is aware that the subject of public access to public land and to private land for various types of recreation has been one of great controversy and bad feelings in the past. The subcommittee would like to move beyond this past history in this hearing and encourages you to offer constructive solutions to the problems you have experienced.

Senator Graham pointed out that the subcommittee cannot make laws, but it can make recommendations, and information obtained at this hearing will enable the committee to draft recommendations concerning access to public lands. He then introduced Mr. Leo Berry, Acting Director of the Department of State Lands.

Mr. Berry stated he was appointed Acting Director about a month ago, and he has worked for the Department of State Lands for several years. He went on to say that when Montana was made a state, it was granted the school section. These lands were granted for "the support of common schools." The courts have interpreted that as generally being a trust. The U. S. Government has set up a trust in which the state of Montana is legally not an owner in fee of those lands. There are strings attached to them. It is interpreted by the courts much the same as a trust that you might set up for your children. That is the purpose and overriding principle of school lands. The history of the uses generally has been for grazing, agricultural, forest, and some urban uses. However, in recent years there has been increasing pressure for public access for multiple use and other demands on state lands. There are several problems associated with that, and that is the purpose of this subcommittee, to try to gather information to address some of those problems.

One of the major problems is scattered ownership. We own 16's and 36's, approximately 5,000,000 acres of them, and it is very difficult to manage them. Generally, the history of the Land Department has been to allow the individual lessee to manage the land because he is the person on the property and closest to the land and is best suited to manage it. Because of that, the Department of State Lands, through its leases, places several responsibilities on the lessee. He is responsible for fire, for noxious weeds, for damage to the property, and possible liability in the case of injury. The result of that responsibility and the effect of that goes with certain rights that are

attached thereto. Because of this responsibility, the lessee is essentially given an exclusive use right.

To open the lands on a defined program, there are three substantial problems that have to be addressed. The legislature has addressed them in the past two sessions and an adequate program has not yet come about. Generally, the three substantial problems are (1) the compensation of the trust, because when you open the lands it makes it less desirable from the lessee standpoint to lease those lands because he now has less control over them. Because of the enabling act and the purpose of the grant, you have to have compensation for utilization or use of those lands when you grant the right to use the lands; (2) the coordination of the uses on the tract suitable to multiple uses, such as how do we coordinate all various uses to which to be responsible; and (3) which land should be open? The department, in its proposal, has avoided opening all of the lands, but rather would go to those lands which are suitable for recreational purposes and which do have access, because access is one of the major problems involved with opening the lands. Generally, state lands are not fenced, are within private ownership, and there is no way to distinguish our land from other people's lands, and there has to be some way to do that. The subcommittee is attempting to gather the necessary information and to address these problems and other public access problems.

The next speaker was Norm Starr from Big Timber, representing the Sweet Grass County Preservation Association. He addressed his remarks mainly to the school section of the state lands situation.

One solution he offered was that the state might exchange school lands for other land, public or private, which is equal in value and as closely as possible equal in area. He mentioned that this can be accomplished by the Department of State Lands but that the department has not done much in this area. There was legislation in the last session which would help this along.

He offered another possible solution whereby the Department of State Lands would establish a monetary value for state lands and set a recreational value at 10 percent of the value of a given piece of land for grazing or farming purposes. Generally speaking, the recreational value, statewide, would be commensurate with value now placed on that land for grazing or farming purposes. The Department of State Lands would give the present lessee first option of leasing that land. If the lessee refuses that, then the Fish and Game or Natural Resources or someone else can lease it. A condition of a lease for recreation purposes must be that the recreation site lessee be responsible for proper management of the land for that purpose.

Mr. Starr stated that they were not against charging a reasonable fee for recreation use of state lands. They are against

someone using them for nothing and not being held responsible for their actions. Mr. Starr furnished the subcommittee with a written copy of his remarks. (Attachment 1)

The next speaker was Ed Croteau from the Bureau of Land Management. Mr. Croteau read a statement from Mr. Edwin Zaidlicz of the BLM. (Attachment 2)

Representative Ed Lien, rancher from McCone County, addressed the subcommittee. (Attachment 3)

Mr. Bill Harrer, Geraldine, Chouteau County, was the next speaker. (Attachment 4)

Mr. Neil Travis, Chairman of the Montana Council of Trout Unlimited, addressed the subcommittee. (Attachment 5)

Mr. Ed Butcher, Winifred, was the next speaker. He said he sympathized with urban people who want to get out into the country and enjoy the space and fresh air; however, one of the key things we have to recognize is that farmers and ranchers are out on that land 365 days a year trying to make a living. Up until the past few years, farmers welcomed sportsmen and recreationists with a smile, but then the numbers became so great that the damage, both intentional and unintentional, became a problem. The farmers were forced to begin regulation of the use of their property. Attempts to force farmers to allow unlimited access through legislation has resulted in total closure of some areas because, basically, of the fear that if a use precedent were established then laws would be passed requiring unlimited access through that use precedent.

I, for example, have a school section in the center of my ranch, three miles from the nearest county road in an unfenced fall gathering pasture. I lease it out of necessity, not particularly out of choice, since it is in the middle of my operation. To allow masses of hunters into the center of my ranch and then expect me to keep them on school sections and protect my farm land, crops and such, would be very difficult and certainly would be a tremendous burden on an individual landowner. Obviously, I don't need to remind the committee that school lands were designed for revenue, and I think that my $1,500 or $2,000 a year use fee should give me some consideration since the state is certainly benefiting financially for renting that section to me. Also in terms of access, because of the vagueness of the laws as to what is a county road, there has been a lot of closure of all unlimited access, and I, for one, have done this since I have 25-30 miles of cattle feeding trails. These feeding trails look like an access road. That is a private road I developed for my use. It certainly would be a serious problem if individuals could run around these roads at will.

Mr. Huennekens' bill last session, for example, provided that if a small number of people sign a petition that they had used a road five years out of twelve it becomes a public road. This resulted in a lot of ranchers giving serious consideration to closing their land because they didn't want a precedent established. In other words, where through tacit agreement they had simply allowed people in areas, which wasn't any problem to their farming operation, now people begin to question in their minds whether they should do that. I think this is something that has to be considered. You can't get into some of this radical legislation like Mr. Huennenkens has been proposing and expect to make friends in the farming community. In other words, this type of legislation is, in essence, resulting in less rather than more access. I would hope that the committee would weigh the consequences of forcing ranchers to provide access through law. I have 10,000 acres of private land on which I allow hunting under controlled situations. However, I would say that if I am forced to open access across the center of my ranch into that one section of school land which I gather my cattle into in the fall, then I would very seriously contemplate closing the rest of my private property to all access.

I think sportsmen had better begin to wake up and think about this. Which do they want -- to trade a law giving them arbitrary access and making life miserable for everybody in general, or trying to get along with the landowner? Those who forced themselves into school sections would not be welcomed with a smile to begin with. Let's not pass a lot of these unreasonable laws and legislation. If the sportsman wants to use my property, he had better take the time to go out and get acquainted with the landowner before hunting season -- make private arrangements. Most ranchers would be happy to allow a few on at a time.

If there is a school section or two in the state which is exceptionally viable for recreation, deal with them on an individual basis -- whether a use fee or going into a school trust, whatever you use, but don't pass blanket legislation damaging to all agriculture and creating a tremendous amount of animosity, which is all it's really going to do. I think this committee needs to concentrate on passing legislation defining public roads, and I feel that they should only be roads which are recognized and maintained by a county or state. Any other trails should be considered private. Also, we have to recognize that due process and an access desired to a piece of public land should certainly go through the legal easement process rather than forcing free access across private land in these school sections. I think this is very, very important. I think there are a lot of points that have to be analyzed in this whole situation.

Mr. Mons Teigen, Executive Vice President of the Montana Stockgrowers' Association, presented a statement to the subcommittee. (Attachment 6)

Representative John Staigmiller, Chairman of the Legislative Fish and Game Committee, said he did not object to well controlled and managed access to public lands or even private lands. In regard to what Mr. Starr said about the public relations -- in 1973 and 1974 the Fish and Game Commission spent approximately $19,000,000 -- $8,000 a year for public relations was all they spent. In 1973-74 we had a bill where they wanted a 20-foot right-of-way to every state-owned section. Ninety percent of the game on leased land is fed 80% of the time by the landowners and the land leasers. I know of one man who has 100 head of cattle on a pasture and in the wintertime he has 70 head of elk. In regard to the number of game wardens, in 1972 there were 471 employees of the Fish and Game, and 72 of these were game wardens. They are the people that are your friends. I myself have never been refused access except once. I am sure that man had a reason.

R. L. "Hap" Kramlich spoke for the Lewistown Rod and Gun Club. (Attachment 7)

Leonard Sargent, Corwin Springs, member of Trout Unlimited, was the next speaker. He stated that he is a rancher and also a member of Trout Unlimited, which sometimes causes a conflict. He felt strongly that as a Trout Unlimited member there should be access to federal land and it shouldn't be at the expense of the rancher or farmer. It should not be up to him to maintain the road, and it shouldn't be up to the state or anybody else to tell him where a road should go. Somehow we have to work out a way for the public to get to the land that they own without costing the landowner inconvenience in time and money. As a landowner, he said he would hate to lose control of who goes across his property, what kind of vehicle and what time of year and what they are going to do. He felt he should not have to mend fences and clean up a mess on his land.

He said he did not know the solution, but probably education in this area would help. There is one cost -- most of the others have been well covered -- that needs some investigation. A few years ago the hired hand of a neighbor started a fire and burned most of a section and property and most of the fences. He didn't know it at the time, but later he found out that the owner would have been completely responsible for the cost of 350 Indian firefighters imported, eleven bulldozers, bombing planes, two helicopters, etc. Actually that rancher would have been responsible and financially liable if he had just given somebody permission to go in there. He said he has been told that that rancher would have been responsible even if he hadn't given permission and the sportsman had gone in on his own. That doesn't seem very fair, but it seems if that is true it should be generally known by more ranchers and more sportsmen and it would make both sides a little more sympathetic toward the problem.

If this is the case, I would suggest that this committee investigate the possibility of having the liability covered some other way so that it won't fall on the shoulders of the landowner -- maybe through the license that the fisherman or the hunter gets. Certainly you would be much more apt to allow free access to your land if you didn't feel that you might end up in a disastrous law suit.

Mr. Bob Saunders, White Sulphur Springs, representing himself and also the Meagher County Preservation Association, spoke next. (Attachment 8)

Mr. Glen Childers, President of the Garfield-McCone Legislative Association also read a prepared statement. (Attachment 9)

Mr. Bill Brainard, Belgrade, represented a ranch corporation -- Brainard Brothers, Inc. -- and also a director of the Agriculture Preservation Association of Gallatin County, said that in addition to what has already been said, he wanted to pass on to the committee a couple of thoughts. A week ago he was at a meeting in Townsend concerning the BLM land, and he wanted to urge the committee to be very careful in trying to get legislation passed for access. At that meeting in Townsend the government officials who were there did not talk legislation, they talked about trading for access and in other cases purchasing it. They didn't even go so far as to suggest legislation which has been brought out here, so he urged the committee to be careful in suggesting legislation in this area. One other thought -- if a rancher makes a mistake, he pays for it. If someone else makes a mistake on a landowner's land, the rancher still pays for it.

He also said that agriculture is the basis of all industry. Anything that moves or lives depends on agriculture. Many sportsmen and many people don't realize that.

The next speaker was Dale Knox, farmer and rancher. He has a state lease at this time and has never made any effort to deny access to this land for the public. He pointed out that he felt this committee has an obligation to recognize priorities. He thought farmers and ranchers across the nation, for the last 200 years, have done a whale of a job of providing food and fiber for the public. He gave the following statistics: Montana is 12th in cattle production; in all cows, 10th; in beef cattle, 8th; in sheep, 6th; in acres in strip crops, 1st; in all wheat, 5th; in all hay, 14th; in barley, 2nd; in flax, 4th; and sugar beets, 10th. In Montana we have 93,000,000 acres; 46 percent of the industry in Montana is accounted to agriculture. If we take 5,000,000 acres and just drop the production capabilities of those acres by a small percentage, he submitted that we are tinkering with food production. He felt we have a grave responsibility in that area. He felt that the farmer and rancher have to be in control of this land.

Kenneth Voldseth, rancher, from Martinsdale, representing himself and the Meagher County Livestock Association, spoke next. Mr. Voldseth said they did not want unlimited access to any land, state or federal. This should be left to the control of the local landowner.

The next speaker was Ed Kolar from Geyser, Montana. Mr. Kolar said they operate a ranch of 10,000 acres, with some 3,000 acres of state land, all accessible to hunters and recreationists. However, some of this legislation has caused him concern in that roads would be opened up to state lands and that a person can file a petition to open up a road that has been used once or twice in the past five years, etc. He said it scares him. He also said he has had no trouble with sportsmen in the past and it seems that he is going to have to close his place in order to protect himself. He has five lakes that are taken care of by the Fish and Game, but if he is going to be overwhelmed by hunters and fishermen, he is going to have to do something about it. The question he had in mind was this: what impact is this committee going to have on the coming legislature in regard to these issues?

Senator Graham explained that this is a fact-finding committee, and what influence they would have on the rest of the legislature, he couldn't say. At least the committee will have some of the answers to the questions that arose during the last session concerning some of the bills that were introduced. What they are attempting to do is to get some facts, identify the real problems, what has caused the problems, if there is inadequacy in the law and hope to have some answers.

Mrs. Joan Zormeir, housewife and State Director of Eagle Forum (the alternative to women's lib): She wanted to urge the committee to be very careful about what they do legislate in regard to people being forced into things.

Mr. Ken Morrow, representing himself and the property owners of Chouteau County read a prepared statement.

Mr. Kenneth Perry, Utica, presented a statement to the committee. (Attachment 10)

Mr. Mons Teigen of the Montana Stockgrowers' Association, read a resolution from the Phillips County Livestock Association passed in May, 1976. (Attachment 11)

Mr. Norm Starr spoke again, urging that if there is a value determined on recreation, that a flat percentage be used on all lands. He said he mentioned this because he has heard that certain lands are being reviewed and surveyed for recreational value. He urged that if the committee comes up with a recreational program on state lands that it be spread over all the

lands so that they will not hurt one particular individual or so that personalities cannot enter into it. His group would like to see a flat percentage based on the grazing fees that are already there or other fees that are there so that everybody shares the cost and not one individual is hurt by it.

He went on to say that he wanted to establish that if there is a recreational value, somebody pays for it. He also felt that the people in agriculture should share that burden, but also wants the man in agriculture to be in a position to control it, so that man should have the first option to buy that value and then he can do what he wants with it. He doesn't have to let the public on, but if he does, he can control it. If he doesn't care to do that, then the Fish and Game, or whoever, can lease it. Mr. Starr said he did not want the situation where the state can pick a certain piece of land and put a high value on it and eliminate the man in agriculture from using it.

Bill Wegner, rancher from Yellowstone County, and member of the Cooperative State Grazing District, suggested to the committee that if ever there is a fee, it should be large enough to cover the cost of policing the lands.

Mr. Bob Wertheimer, Utica, stated that he uses about 10,000 acres of state lands and it is interspersed among private lands. He said he lets everybody hunt out there and it gets to be a real problem. As Mr. Teigen pointed out, the big problem out there is numbers. He stated that he treats the state land just as he does his private land-- takes care of it, maintains it, cleans it and there is no distinction between the private land and state land. He pointed out that there is a great expense that the Forest Service puts out for federal land, but on the state land, the landowner puts into it. If there isn't any sort of regulatory control over hunters who come into his land, he won't be able to control it himself. He suggested the committee think about the expense of maintaining state lands.

Mr. Joe Tadevick from Chouteau County, full-time rancher and farmer: In response to Mr. Starr's proposal, Mr. Tadevick asked how you could put a value on hunting or fishing. Who is going to set that value? He voiced fear that if something like that comes up, they will run into a mess like the people in eastern Montana have with their land and the coal leases. He felt that Montana does not need any more laws or rules, we need less.

Mr. Steven Gilpatrick, Hilger: Mr. Gilpatrick stated that in the past year the stockgrowers have been accused of not paying enough for their leases. This point, he did not argue. The recreationists who criticize the grazing fees want to use this land so why should we not do what the gentleman from Big Timber says, pay for this privilege they receive. If recreationists are getting benefits from the land they should also pay for the benefits.

Senator Graham assured the participants that all the comments and observations are going to be carefully looked at and screened. He said the committee is not through with its investigation and probably won't be until the legislature convenes. He also said that he is a rancher, still in the business of ranching, and does allow fishermen and hunters on his land, but that there are many problems ranchers face. As an example, he mentioned liability insurance which he carries in case one of the hunters or fishermen gets hurt while on his land. He suggested that hunters and fishermen be granted a license with the right of revocation. Take his license back if he is a violator. You can have your driver's license revoked. Why don't the sportsmen put their own people on this thing? It's really a privilege to go onto a man's land to fish or hunt. The man paid for the ranch and he is allowing this. Most sportsmen are good, but there are a lot of things they could do to police themselves. All of these things would help. He also pointed out that in the 16 years he has been in the Legislature he has never seen a bill sponsored by a sportsmen's group to accomplish this. Good sportsmen don't want bad sportsmen in their groups, but none of them are doing anything about it.

Senator Flynn wondered if there would be a better relationship if the Fish and Game added a fee to each license and created what you would call an unsatisfied judgment fund. This fund could be set aside and any rancher could file a claim against it if he was subject to extreme damages on his land, caused by public access.

Representative Luebeck stated that most of the comments today have been directed at state lands, but his biggest concern is about access to federal lands, and it is not opening up additional access so much as keeping the access we have.

Senator Graham observed that with the increase in recreation, the privilege of access to public lands has been translated into a right by the recreationists. It was his feeling that public access may have to be determined road by road.

Mr. Butcher suggested that the right of eminent domain may take care of some isolated instances, instead of blanket legislation.

Senator Graham stated that the committee had requested further research into this to see if the laws have enough teeth in them to be enforced. He also stated that he was personally going to investigate some of the areas that have been mentioned here today. He said there are a lot of questions to be answered; for example, whether there is an existing right-of-way, who is going to maintain the road if it is opened--the county, BLM, Fish and Game? Someone has to be responsible.

Senator Roskie commented that "wilderness" is not in truth such a conflict as it may appear. There has been a continuous effort

to create more wilderness. He felt that the Square Butte Management Area has created sort of a wilderness idea in a non-wilderness situation, where people can come and park and walk. He said he was not sure there is all this conflict really. A lot of problems have been created with the four-wheel drives and two-wheel vehicles, and track vehicles, etc. He wondered if maybe we haven't been carried away with wheels, and that you can get nowhere unless you can drive it or ride it and it has a motor. Maybe if the idea of wilderness were carried forward into the roadless concept, the use of land would not be as damaging or destructive or as accessible as we have made it. He also stated that he felt the biggest problem was the failure of the Fish and Game Department, who has the major responsibility in landowner-sportsmen relationship, to redeem that responsibility properly. He believed that the large bulk of problems between the landowners and sportsmen can be resolved, and felt that this is one of the major responsibilities of the Fish and Game Department.

Representative Barrett complimented Mr. Starr on his proposal and stated that it made pretty good sense to him. He expressed appreciation to the participants and said if they could continue to work toward trying to stop what could be a potential feud between landowners and sportsmen, that they will gain something. One of the things that makes this country good is the fact that we can talk these things out and work together. He felt that the solution should be kept at the local level and that is where it can best be solved. Present laws could be changed or enforced a little more adequately to solve the problems.

Representative Day stated he would like to take issue with the gentleman who said legislators are uninformed. If they are uninformed, it is not the legislators' fault, it is the constituents' fault. The constituents have an obligation to the legislators to let them know their feelings.

It was asked of Mr. Berry how much revenue the state land or school land had brought the state last year. Mr. Berry replied that the total was approximately $21 million.

Roger Fliger of the Fish and Game Department, stated that he had been involved for some time in landowner-sportsmen relationships. He said they also have the hunter safety program, and the number who have been certified is approaching 150,000, so at least in Montana most of the hunters have been through a program. In most of the other states which have a program which is accredited by the National Rifle Association, hunters must pass those programs to buy a license in their states. There has been quite an extensive program of hunter-landowner relationship. He said he realized there has been a problem in the past. He felt there is a lot of work to be done with the use of four-wheel drive vehicles. There is legislation whereby they can enforce off-road vehicle use. They have been making

a lot of arrests and doing a lot of educational work along those lines. The Fish and Game Department has the responsibility of the game and wildlife on both state and federal lands, and they are trying to match them up. Perhaps their problem is equal management. In order to open up these lands, it is going to take a tremendous amount of work with the department, with the landowners, with the sportsmen, all getting together and ironing out the differences. He hoped that these lands can be controlled--identify key wildlife areas and key recreation areas. Perhaps additional law enforcement in the department will be a step in ironing out problems, both for recreationists looking for a place to come, and the landowner who is living there making a living.

Senator Graham suggested that if the Fish and Game Department had more game wardens instead of so many biologists it would be better. Mr. Fliger stated that it takes a lot of special training in law enforcement and they have made a concerted effort in the last few years to train all these other people to enforce the laws.

Mr. Starr offered a solution for the Fish and Game and the Department of State Lands. There are scattered school sections all over. If the Fish and Game Department runs into a situation like that, if they would go to the Department of State Lands and say you have certain people who want to buy certain school sections around the state. We'll organize it, and the people will buy it, and then we'll exchange for those school sections and the State Land Department will lease it from the Fish and Game for their purposes. You will accomplish several things-- you will not be taking private land off the tax rolls; you would still be leaving the same value and approximately the same acres in the school trust; and the income would still be there and you would be eliminating some of the private landowners' problems and worries about access to school sections.

Letters and testimony received subsequent to the hearing are attached and made a part of the minutes.

Senator Graham expressed his appreciation to all participants at the hearing, and the meeting adjourned at 12:45 p.m.

TESTIMONY OF NORMAN K. STARR, BIG TIMBER, MONTANA

Hearing on public access to public lands, held by Montana Legislative Subcommittee on Agricultural Lands -- May 15, 1976.

As I see the problem, recreationists and other persons want to use State Lands for nothing, in spite of the fact that the Enabling Act, State Constitution and State laws dictate that these lands be used solely for the purpose of financially supporting our schools.

A proposed solution is this: If State Lands do, indeed, have a recreational value, then let the Department of State Lands establish a monetary value for that purpose. My suggestion would be that the recreational value be set at 10% of the value of a given piece of land for grazing or farming purposes. For example, if a piece of land was now leased for $250.00 per year, the recreational value would be $25.00 per year. Then, give the current lessee for agricultural purposes first option to also lease the recreation rights. If the lessee declines to also lease the recreation rights, then allow the Fish and Game Department or anyone else lease the recreation rights for the same figure.

A condition of a lease for recreation purposes must be that the recreation rights lessee be responsible for proper management of the land for that purpose. The lessee must be responsible for litter and garbage control, soil erosion, providing sanitary facilities for the recreationist users and protecting against trespass and damage to adjoining lands. This must include locating and designating boundaries

and marking, or fencing, and posting these boundaries. Some sort of provision must also be made to compensate the State for damages to the State property and the agricultural lessee for damages to crops and livestock.

We are not against the charge of a reasonable fee for recreation use of State Lands. We are against someone using them for nothing and not being held responsible for their actions.

One thing which must be kept in mind is that allowing recreation use of State Lands cannot, in all probability, help but lessen their value for other uses and thereby decrease the income from these lands.

Norman K. Starr
Sweet Grass County Preservation Association

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May 10, 1976

Mr. Norman K. Starr
Big Timber, Mt. 59011

Dear Norm:

Attached are HB 98, along with my analysis, and the Department of State Lands' proposed substitute for HB 98, along with their analysis and mine.

I think that the Department of State Lands' proposal is certainly a step in the right direction, if we have to have this at all. There should be some penalty provision for violation of the Department's rules and regulations (Sec. 6) and also for violation of Section 7 or any other part of the act.

With regard to the compensation requirements, Section 11 of the Enabling Act provides as follows:

> "That all lands granted by this act shall be disposed of only at public sale after advertising--tillable lands capable of producing agricultural crops for not less than ten dollars ($10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars ($5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, nonmineral, unreserved public lands of the United States within the state.
>
> "Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons, and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.
>
> "The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however,

"that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

"With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions. Any state may, however, in its discretion, add a portion of the annual income to the permanent funds.

"The lands hereby granted shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for the purposes for which they have been granted."

Article X, Section 11 of the 1972 Constitution of Montana provides as follows:

"Public land trust, disposition. (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated, or devised.

"(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

"(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

"(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area."

Section 81-2401, R.C.M. 1947 (which could be amended or repealed by the Legislature) provides as follows:

"Policy of state. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefitting therefrom and that in so doing the economy of the local community as well as the state is benefitted as a result of the impact of such development."

This seems like a hell of a good policy and seems to set forth the real purpose of administering school lands. Read this in connection with the enabling act. After all, the sole purpose of these lands is "for the support of commons schools" (Sec.10, Enabling Act) or for "university purposes" (Sec. 14, Enabling Act).

It is my opinion that anything which detracts from the value or income producing ability of these lands is contrary to the intent of the enabling act. They weren't given to the State for playground purposes, but for generating income for schools. If the Legislature ever gets this clear in their minds, it should eliminate a lot of this B.S.

As far as condemnation is concerned, I have some problems with this. I think that some controls should exist, so that there just isn't willy-nilly condemnation of access to state lands.

I think the provision in the Department of Lands' proposal that all condemnation must be authorized by the Board after considering each specific case is a good one. Compare this with Huenneken's version which makes condemnation of a right-of-way mandatory to each parcel of state land containing 640 acres or more.

I really like the Department of State Lands' proposal limiting public access to lands which are adjacent to an established public road, highway or right-of-way or adjacent to public land which has

access by an established road or highway. See Section 3, subsection (3) of their proposal.

If you need anything else, let me know.

Sincerely,

Conrad

Conrad B. Fredricks

CBF/sm
Encls.

ANALYSIS OF

HOUSE BILL NO. 98

Section 1. Self-explanatory. One might question the logic of the second paragraph.

Section 2. The purpose of this section apparently is to set the stage for the condemnation provided in Section 7(3).

Section 3. Note that it applies to lands "suitable for or being used for grazing" that have "potential for use for outdoor recreation". Note, however, Section 7(2).

Section 4. Closed by whom? How are they closed?

Section 5. How will the lessee or permittee enforce his determination of the roads or trails to be used? Shouldn't motorized vehicles be restricted to roads? A trail could be almost anything, such as a stock path or game trail.

Section 6. Big deal! Why not delete "malicious or accidental" and "wild" from line 15, page 2? Why is there no provision for damage caused to the lessee's or permittee's property resulting from actions by the general public on those lands?

Section 7.

(1) Self-explanatory.

(2) Note that this applies to lands used for "grazing, agriculture and forestry". This is inconsistent with Section 3. Is this then not limited to 640 or more contiguous acres as provided by Section 3? Does it apply to all such lands, even if less than 640 contiguous acres? [What if the best or shortest access is partly across land of the lessee and partly across lands owned by someone else? There is no provision for using the shortest access.]

(3) This only applies to 640 acres or more. Contiguous? Also makes provision for going to the nearest public road. Shouldn't the last word of line 20, page 3, be "or" rather than "of"? Shouldn't the "(1)" in line 23, page 3, be changed to "(2)"?

(4) This is a lesser maximum penalty than the usual misdemeanor maximum of $500 fine and 6 months in the county jail. There is no provision for a penalty for persons who trespass, hunt or shoot on private land from the state land once they get there.

(5) Self-explanatory.

Section 8. Self-explanatory.

INTRODUCED BY House BILL NO. 98
Hanneldson Gilbreck Vincent

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING ACCESS TO STATE LANDS AND THAT STATE LANDS SHALL BE OPEN TO THE GENERAL PUBLIC FOR RECREATIONAL USE EXCEPT IN CERTAIN CASES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. The legislature finds that outdoor recreation is an important element in the way of life of many Montanans. It finds furthermore that outdoor recreation is an important element in the industry of tourism, a vital part of Montana's economy.

The impact of outdoor recreational activities is too great for privately owned lands to support. It is therefore necessary that the public lands of the state of Montana be utilized under the multiple use concept for outdoor recreation.

Section 2. Declaration of right of access. Inasmuch as a majority of state lands are not accessible by public road, the state of Montana affirms its right of access by way through necessity that it may use its lands.

Section 3. Lands available for recreation. All state lands consisting of six hundred forty (640) acres or more contiguous lands suitable for or being used for grazing that have potential for use for outdoor recreation shall be made available for this use.

Section 4. Closure for safety. State lands used for outdoor recreation may be closed to that use for reasonable periods of time for reasons of public safety.

Section 5. Use restricted. The use of motorized vehicles by the public on the lands described in section 3 of this act is restricted to the roads or trails which may exist on those lands.

The person leasing the land or holding a permit for use of the land may determine the roads or trails to be used.

Section 6. Liability. The lessee or permittee of any lands described above shall not be held liable by the state for malicious or accidental property damage or wildfire on those lands resulting from actions by the general public on those lands.

Section 7. Conditions for use. There shall be access to all state lands open for use by the public under the provisions of section 3 of this act according to the following:

(1) Where parcels of state land contact other public lands, state or federal and the common boundary is fenced, gates shall be provided for access to the state lands.

(2) Leases and permits for state land used for

grazing, agriculture, or forestry shall include a provision under which the lessee or permittee grants a right-of-way for the duration of the lease or permit across the private or deeded land for public access to the state land. The right-of-way granted need be no more than a single vehicle width strip of land or trail with minimum deviation from the trail for the purpose of passing another vehicle inherent in the easement. It may be posted at the discretion of the landowner to indicate that it is a special state access trail only, and that no trespassing, hunting or shooting is allowed on or across the private land on either side of the right-of-way. The owner of the land shall have the right of designating the location of this trail.

(3) Where state lands consisting of six hundred forty (640) acres or more, are surrounded by private land not owned directly or indirectly by the holder of any state lease or permit, the state shall condemn through the right of eminent domain as access, land twenty (20) feet wide across the private land, preferably and if possible along a section line, from the nearest public road right-of-way, of state or federal land to which there is access to the isolated state land. This special state access right-of-way may be posted as in subsection (1) of this section.

(4) A person violating the posting provisions of this act by trespassing, hunting or shooting on or across the

private land on either side of a state access trail is guilty of a misdemeanor and upon conviction shall be fined not to exceed three hundred dollars ($300) or imprisoned in the county jail for a period not to exceed thirty (30) days, or both.

(5) The department of state lands shall provide owners of private lands bordering state access trails referred to in this act with signs indicating the official posting at the private landowner's request.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

ANALYSIS OF
DEPARTMENT OF STATE LANDS SUBSTITUTE
FOR HOUSE BILL NO. 98

(Note: This is the proposal that Mr. Schwinden presented to the House Natural Resources Committee at the hearing on Saturday, January 25, 1974. This bill is now in a subscommittee comprised of Fred Fishbaugh, Herb Huennekens and Elmer Schye.)

The discussion appended by the Department to the proposed substitute bill is also included. Because it is an analysis of their thoughts behind the bill, I will only add additional thoughts which occurred to me.

Section 1(3). Limited to hunting and fishing, rather than the "outdoor recreation" of HB 98.

Section 3(1)a. Requires payment by Fish and Game Department.

Section 3(2)a. Must be adjacent to an established public road, highway or right-of-way or adjacent to public land which has public access. If such is the case, what is the need for the last sentence of Section 9?

Section 8. Would suggest deletion of "malicious or accidental" from the second line. Would suggest deletion, as redundant, of "accidental" from the fourth line. Would suggest adding, at end, "or while crossing private lands to go to or from state lands on an access right of way secured pursuant to Section 3(2)a or Section 9."

One would certainly hope that, in making rules and regulations under Section 6, the department would make provision for "conspicuously posting" the boundaries of state lands open to public access, to protect the adjoining landowner from trespass. Maybe this should be specifically required in the bill.

Perhaps a subsection g. should be added to Section 3(2), as follows:

"g. If the boundaries of the state land are not readily apparent or identifiable and cannot be conspicuously posted against trespass on adjoining private lands."

DEPARTMENT OF STATE LAND
(Substitute Bill)

Discussion of Possible Amendments to
H.B. 98 (Public Access to State Lands)

The basic intent of the proposed amendments is to provide for a well planned and gradual transition to increased multiple use of state lands. The concept recognizes that public use of state lands should not interfere with private property rights; that only certain lands are suitable for public use; and that the institutions to which the lands were granted should receive an income from public recreational use. Each section is discussed below.

Section 1.

"Department": The department of Natural Resources administers state forest lands and the Department of State Lands administers all other state trust lands.

"Public Access": Rather than opening appropriate state lands to all recreational uses it will be easier to plan for the two major public recreation uses of hunting and fishing. Therefore by definition public access is limited to hunting and fishing.

Section 2. This section specifies that only by an official agreement and payment of fees by the Department of Fish and Game will state land be open to public access. An agreement could cover a single parcel or all appropriate state lands in a region.

Section 3(1). The Board of Land Commissioners must approve any agreement which will grant public access rights. The agreements must provide for an access right payment and compensation to a lessee for damages. The damage provision could be fulfilled by insurance or by a damage bond similar to a New Mexico public access system. The details would be written into the agreement.

(2) This provision will require the department to carefully investigate the present uses of state land prior to entering into any agreements which provide for public access. The 6 criteria for selection of lands for public access would insure that there will be a minimum of use conflict resulting from public access. State lands must be accessible by a public road in order to be opened for public access. This should reduce trespass problems. The selection process would take several years to completely evaluate all state lands.

(3) Agricultural lands, if they meet the general selection criteria, would not be open to public hunting until after harvest.

(4) Subsection 4 of Section 2 authorizes improvements to manage or enhance public access. It is anticipated that cattle guards will be a necessary improvement in many cases to eliminate hunter-lessee conflicts.

(5) Many persons feel that organized local management of public access is desirable. There are several "hunting districts" existing in the state which provide a means for local landowners to manage public hunting, not for a profit, but

to reduce sportsman - landowner conflicts. The proposed amendment would encourage the formation of these organizations and authorize the department to delegate the management of public access to these local organizations.

Section 5(1). This provision will require the department to involve lessees of state land in the decision to open state land to public access and will insure that correct information is available in order to make the decision.

(2) Even under the most careful selection process to open state lands which have a low potential for use conflicts, there will always be emergency situations which require prompt action in order to prevent damage to property or resources. The amendment would allow a lessee to take prompt action to close state land if an emergency situation arises.

Section 6. Rules and Regulations: Self explanatory.

Section 7. One of the major conflicts involved in public access is the possible damage to state land resources by motorized vehicles. This amendment will allow the department to designate appropriate roads. On certain lands major use conflicts could be avoided if access were by foot only. This is especially true of lands which contain irrigated fields.

Section 8. This provision limits the liability of a lessee. State land leases specify that the lessee is responsible for damages to state land resources.

Section 9. Authorizes the purchase of rights of ways in order to establish public access to state lands. Condemnation must be approved by the Board of Land Commissioners.

PROPOSED REVISION OF H.B. 98

BILL FOR AN ACT ENTITLED: AN ACT PROVIDING THAT THERE SHALL BE PUBLIC ACCESS TO CERTAIN STATE LANDS FOR PUBLIC HUNTING AND FISHING.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. When used in this act, unless a different meaning clearly appears from the context.

(1) "Department" means either the Department of State Lands or the Department of Natural Resources acting as the administrating agency of state lands under their respective jurisdiction.

(2) "Board" means the State Board of Land Commissioners.

(3) "Public Access" means the use of state lands by the general public for hunting or fishing or both in accordance with the provisions of this act and any general laws governing hunting and fishing.

Section 2. State land shall be open to public access during the hunting or fishing season for the area in which the land is located upon payment of public access fees by the Department of Fish and Game and the approval of public access agreements by the Board as provided in Section 3.

Section 3. (1) The Department and the Department of Fish and Game may enter into agreements which provide for public access to state lands. The agreements shall be approved by the Board and shall contain provisions considered suitable by the Board to meet its duties and responsibilities and shall also contain provisions which provide for:

a. An annual payment by the Department of Fish and Game of not less than five (5) cents per acre for state land open to public access.

b. Compensation to a lessee or permittee of state land by the Department of Fish and Game for any proven damage to a lessee's or

permittee's improvements, crops or property on state land occurring as the direct result of activities by the general public while using state land for hunting or fishing.

(2) State Lands shall not be opened to public access if the Department determines that:

a. It is not adjacent to an established public road, highway or right of way or adjacent to public land which has access by an established public road or highway, provided however that should a private land owner agree to provide access to state land the land may be opened to public access.

b. Improvements such as, but not limited to, buildings and structures in active use and extensive irrigation improvements would likely be subject to accidental or malicious damage as the result of public access.

c. The land is of critical importance to a lessee or permittee for grazing purposes during the entire hunting season.

d. Public access would create a public safety hazard.

e. Public access would interfere with the preservation, development, utilization or management of the state land resource.

f. Adequate fire protection is not available.

(3) State lands used for the growing of crops may be opened for hunting from the end of harvest on those lands until the end of hunting season.

(4) The Department of State Lands, the Department of Natural Resources and the Department of Fish and Game may place suitable improvements on lands open to public access in order to manage or enhance the public use. All improvements proposed by the Department of Fish and Game shall be approved by the Department of State Lands or the Department of Natural

Resources depending upon the respective jurisdiction. Particular attention shall be paid to installing necessary cattle guards.

(5) The Department may enter into agreements, subject to approval by the board, with non-profit organizations established to manage public access for hunting to private, state and public lands. The department may delegate the right to open or close state lands to public access for hunting to such organizations, provided the purpose of the organization is to provide means for persons who own and use land for agricultural or grazing purposes to manage public hunting access so that the general public may hunt on private, state and other public lands leased, owned or permitted by the members of the organizations which are not vital to hunting season grazing or agricultural uses. The Department may not enter into agreements with such organizations which charge a fee greater than that necessary to provide funds to manage the public access. Agreements between the department and the Department of Fish and Game shall reflect any rights granted to such organizations.

Section 5. (1) Prior to opening any state land to public access the department shall notify any affected surface lessee or permittee of the intention to open the state land to public access. The affected lessee shall be provided with a copy of this act and any rules and regulations issued by the department. The affected lessee shall be afforded opportunity to submit information as to why the state land should not be opened to public access in accordance with this act and rules and regulations.

(2) A lessee or permittee may close all or part of his leased or permitted state land to public access for emergency reasons to protect his property or state land resources provided he notifies the Department within 3 days

of such closure. Such closure may not be for a period longer than 7 days without approval by the Department.

Section 6. The department may prescribe rules and regulations consistent with this act for the use and management of state lands open to public access.

Section 7. The use of motorized vehicles on lands open to public access are restricted to those roads and trails designated by the Department as open to public use.

Section 8. The lessee or permittee of any state land open to public access shall not be held liable by the state for malicious or accidental property damage or fire on those lands resulting from actions by the general public on those lands; nor shall he be liable for ordinary negligence which results in accidental injuries or damages sustained by a member of the general public while using state land for public access.

Section 9. The department and the Department of Fish and Game may purchase, subject to available appropriations, sufficient interests in private property to provide access to state lands which could be opened for public access. Condemnation through the power of eminant domain shall be approved in each specific case by the board.

STATEMENT OF EDWIN ZAIDLICZ BEFORE THE
STATE SUBCOMMITTEE ON AGRICULTURAL LANDS
Yogo Inn, Lewistown, Mont.
May 15, 1976

Mr. Chairman, members of the Subcommittee on Agricultural Lands, ladies and gentlemen. My name is Edwin Zaidlicz, and I am Montana State Director for the Bureau of Land Management. I welcome the opportunity to testify before this subcommittee today because access to public lands is a responsibility common to both State and Federal government. As the pressures on public lands continue to mount, governmental leaders at all levels will have to work in harmony if we are to fulfill our obligations to the public we serve.

Before discussing specific access problems, however, a brief discussion of BLM's access policies and difficulties will help place our situation in perspective.

BLM administers about 8.1 million surface acres in the state of Montana under the principles of multiple use. In addition to these surface acres, the Bureau is responsible for the administration of 38 million subsurface mineral acres. National resource lands under our stewardship are lands left over from the great westward expansion which through a variety of programs including preemption acts, homestead acts, and grants to railroads, created a vast crazy quilt pattern of public-private surface ownership. National resource lands

are consequently scattered across the width and breadth of Montana in nearly 10,000 separate pieces. Many of these public land parcels are isolated islands surrounded by private property.

By law, the public does not have legal access to national resource lands unless those lands can be reached by a county or state road, or some other public thoroughfare. But the public still has a legal right to enjoy the resources these lands contain, and this is the main reason for our concern. If private property must be crossed in order to reach public land, the private landowner's permission must be obtained. While the rights of the surface owner must be recognized, there are situations in which some landowners are closing their private property solely for the purpose of charging a fee to reach public lands. The end result of this is the creation of private game preserves which are accessible only to the sportsmen who are willing to pay a substantial fee for the privilege of crossing private lands. This is an emerging situation which we see as becoming highly controversial.

Questions often arise concerning the right of grazing licensees and permittees to prohibit access to national resource lands. The Taylor Grazing Act of 1934, is explicit about the recreational use of public domain inside and outside grazing districts.

It states that nothing in the Act shall be construed as in any way altering or restricting the right to hunt or fish or as vesting in any permittee the right to interfere with these or any other pursuits permitted by law.

Federal regulations and the Taylor Grazing Act, however, deal only with situations in which the public has legal access to Federal lands via county roads or other public thoroughfares. More and more people are looking to national resource lands as a place to recreate and to partake of all the other legitimate uses of public lands including mineral exploration, rockhounding, etc. Because of land ownership patterns and the understandable reluctance of private property owners to permit large numbers of people to cross their property, obtaining access to public lands is becoming increasingly difficult. In a nutshell, that is BLM's access policy and a brief rundown of the problems facing us here in Montana.

As far as this subcommittee and ultimately the State Legislature are concerned, there are two problem areas that BLM would like help in resolving. The first problem concerns the unknown legal status of virtually thousands of miles of roads and trails in Montana. I can appreciate that the steps required on each individual road to establish its legality under State Law present a formidable task. Lengthy record-searching is involved as are legal proceedings in local district courts. The fact remains, however, that until Montana's 56

counties formalize the ownership of their roads and trails, our ability to develop legal access will be seriously impaired.

We realize that access cannot be practically provided to every isolated acre of public land in Montana. That is neither possible nor desirable. In fact, as we go further into our access program, we may want to close some areas for the sake of more efficient management, to protect fragile areas, or to protect a threatened wildlife species.

BLM has an active easement acquisition program. In spite of the fact that we are constrained to some degree by limited manpower and funds, the Bureau hopes to purchase 26 easements in various parts of the state this fiscal year. This number can be increased to about 60 a year in the very near future. Before this program can be fully implemented, however, we must have a stable system of public roads from which to build. Even with this accomplished, we will never have the financial or human resources to provide all the needed access. We earnestly solicit help from the state and local government in this regard.

The second problem I would like this subcommittee to consider involves the abandonment of county roads. Our main concern here is that in many instances the abandoned roads constitute the only means of access to large blocks of national resource lands.

BLM's problem with abandonments stems from the fact that the Federal Government is not treated as a freeholder of property

in some counties. These counties consequently feel they do not have an obligation to the general public to keep a road open - even if it is the only public access route to national resource lands. We believe that consideration should also be given to "other owners." They are citizens of the country who own these public lands and need access if they are to be able to use and enjoy them.

There was a recent case in which county residents petitioned their Board of Commissioners to abandon a county right-of-way which provided access to a substantial acreage of public land. The petition was granted in spite of BLM's protest that the abandonment constituted a loss of legal access for the Bureau to carry out its management responsibilities as well as the right of all citizens to use and enjoy their lands. The commissioners' reasoning in granting the petition was that access to public lands should not be provided at county taxpayer's expense.

Under Montana law, any 10 taxpayers on a road may petition their county commissioners to abandon the road. The petition must outline the route of the road, the lands and owners affected, whether the owners consent to the abandonment, and the necessity for, and advantage of, the proposed action. The Board investigates the petition and sends a notice of its decision to all owners of land abutting the road to be abandoned. The owners, in this case, are those listed on the county assessment rolls. Since BLM is not considered a freeholder of property in some counties, we are not informed of the action from the time

the petition to abandon a road is filed until notices of the final decision go out. This procedure is followed even though BLM is an abutting landowner, and we strongly object.

Why county officials view BLM as a noncontributing landowner from the standpoint of taxes is difficult to understand. The budget for BLM in Montana in 1975 was in excess of $7 million. Almost all of this was spent in the state, either as salaries spent by our employees in the community, or as payments to contractors, merchants, suppliers and others in carrying out our programs in the state. I would like to point out that unlike almost any other agency, State or Federal, BLM produces revenues for in excess of appropriations. In Montana and the Dakotas, BLM is even more efficient at it than in some of the other states. On the national average, BLM turns back to the General Fund of the U.S. Treasury, $2.50 for every dollar that the Congress appropriates for us to operate on. The figure for Montana is $3.00 to one.

It is from these revenues that funds are redistributed to the states. During 1975, BLM returned to the State of Montana more than $4.5 million of revenues collected from mineral leasing bonuses, royalties, and rentals. Also during 1975, 10 Montana counties received direct payments totaling more than $257,000 as their share of grazing leases, mineral leases, and other user fees under the Bankhead-Jones Act. Under provisions of the Taylor Grazing Act, the state and 40 individual counties received a total of more than $140,000 during Fiscal

Year 1975. The Taylor Grazing Act specifies that the funds are to be expended for the benefit of the counties in which the lands producing the moneys are located.

The Mineral Leasing Act further provides that 52½% of all revenues generated by mineral leasing of federal lands is paid into the Reclamation Fund, for appropriation by Congress for the continuation of Bureau of Reclamation projects throughout the United States. There are numerous such projects in Montana. For example, the Canyon Ferry Dust abatement project is currently underway, and the Tiber Dam and Reservoir project will soon be in its initial stages.

In addition to these revenues, a substantial amount of money is brought into individual counties either directly or indirectly as a result of the products derived of national resource lands.

We understand that tourism is Montana's third largest industry. Continued growth of this industry depends to a large extent on the accessibility of the public lands to the people who want to use them.

Examples of this spinoff include hunting and fishing licenses, both local and out of state, and property taxes levied on improvements made on leased lands.

County road abandonments have been protested by BLM but with little success. A remedy to this situation must include an appeal procedure -- no such procedures exists under present state law -- and recognition of the rights and responsibilities of BLM as a freeholder of property. Such

recognition will at least put us on the list of "abutting landowners" who are contacted prior to a proposed road abandonment.

Aside from the points already raised, there is one more which deserves our consideration: For government to function, for BLM to perform it's management job, for county sheriffs to operate, for state game wardens to discharge their responsibility, there must be access to the lands involved.

Public thoroughfares, particularly county roads, are the keys to public land access in Montana, as well as to efficient public land administration. For these reasons, I believe every effort should be made by local, state, and federal governments to work together to assure that roads are identified and that existing roads to public lands are not closed. If this is done, we all will have come a long way in providing access for every legitimate use of our public lands.

ATTACHMENT 3

The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REP. EDWARD LIEN
HELENA ADDRESS:
202 SO. COOKE
PHONE: 443-2990

HOME ADDRESS:
S.R. 231 BOX A33
WOLF POINT MONTANA 59201

COMMITTEES:
TAXATION
STATE ADMINISTRATION

May 15, 1976

Testimony at Public Access Hearing
Lewistown, Montana

Mr. Chairman:

Thank you for the opportunity to present testimony at this hearing on the problems of public access to the great outdoors in the Big Sky Country of Montana.

I would first like to submit some personal background. I am a second generation agricultural land owner from northern McCone County. I live on, manage, and derive my livelihood from selling agricultural produce from this land. I consider myself, and am accepted by others, as a conservationist. I am also a member of the Montana legislature, representing the largest land area district in the state. Judged by my area's standards I own a very modest-sized unit of land, and to date I have not posted any of the property I control against public trespass or hunting.

The issue as I see it is public v:s private property. I would like to interject here that I consider a properly executed lease as an increment of private property. I would take issue if I were arbitrarily denied access to the Federal Building in Billings, but would respect a Billings businessman or home-owners prerogative of excluding me from his property if that was his wish. I would also be surprised if my access to the above named public building was not immediately curtailed if I started abusing my access privileges in an irresponsible or destructive manner.

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STATE ADMINISTRATIO

Two-thirds of Montana is privately owned and these private land owners hold stewardship of a large portion of the public owned sector. Montana agriculturists have long supported the multiple-use concept of public land management. Multiple-use does not mean restricting it to agriculture or timber production. Montana's private land holders are not promoting a confrontation with recreationists, but they have a very strong, deep-seated, committment to property rights and responsibilities.

Land managers, private and public, have a responsibility to the recreationist. Mutually feasible access should be constantly sought. Recreationists have a responsibility to the land and should not be eager to jeapordize the multiple-use concept, as Mother Nature has made much of the 1/3 of public Montana difficult to visit.

The State Land Department has predicted this problem and embarked on a program that should be emulated by the federal land agencies as well as the private sector. The state owned land is being systematically inventoried as to recreation potential with the plan to withdraw selected segments of high recreational value lands from agricultural use and leasing them for recreational use. With state land this action necessarily has to be contingent on not diminishing the school trust.

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STATE ADMINISTRATION

Perhaps all Montana citizens should prepare themselves for the coming day when free outdoor recreation access will go the way of the free-grass era of the old west.

In closing I would like to make a plea for legislative restraint and responsibility. A short-sighted land owner who uses every legal means to use a small plot of private land to deny access to a large area of public domain should not be considered representative and used as the basis for legislation. We all live by the rule of law and laws should be carefully written to govern a state not solve a local inconvenience. A rash of poorly conceived access legislation only confuses the issue and promotes divisiveness and enjoyable outdoor recreation can only be the loser.

Thank you,

Edward Lien

Fort Benton, Montana

15 May, 1976

Re: A hearing in Lewistown, Montana on the subject of public access to State lands.

As a rancher who leases land from the state of Montana, I would like to make a few comments. Having state land entrusted to me to maintain or improve its condition and keep it productive, I am quite naturally concerned.

Those who would like to change access rules have probably been denied use of the land by a rancher who in turn has had problems with less responsible people. I only ask that they try to learn the contributions these lands now make to public welfare and also appreciate that it is the condition the lands are in that makes them desirable for recreation. Then I think the responsible people will want to cooperate with the rancher who is the caretaker. That means making arrangements ahead of time so that precautions can be taken and the rancher will know who has been there. It does not mean having a few beers then deciding to take a case out for a fling in the hills. Then the next time go to a different place unless someone cleaned up after them.

The contribution these lands now make to public welfare is not just the lease money that goes primarily into the school system for education of all our children. It is also the money the rancher generates on the land for himself which he spends and it contributes to the general economy of the area.

When the rancher cares for the land as required by the Department of State Lands, it provides habitat for wildlife and adds to the natural beauty of the area. Most ranchers have added to the land with their own money in developing water sources, fencing and other management tools that make the land more productive. They also have to guard against erosion and fires.

If access without responsibility is allowed it seems to me that the lands will be worth less to the rancher and hence less to the

school system but also worth less in their recreation value.

I have seen the extreme of this in unsupervised lands with pickup trails that erode into gullies, potholes dug for prospecting, trash laying about and even shacks and old car bodies.

Most all rural people are uneasy when they see strangers about on their land. They wonder what they will find when these people are gone --- will it be a dead or crippled animal, a fire, crops or grass trampled down, gates open and cattle mixed, equipment or other property with bullet holes in it, or just some trash laying about? Our city friends do not have to worry about this when they see us in town because they know if we do any of these things we will wind up in jail. Not so out here, they drive off and it is hard to prove who was there or who did the damage.

City property is concentrated together and protected by police, large tracts of public land such as national forests can be watched by forest rangers but these lands are scattered and dispersed among private lands. Private supervision by the leasee is the most feasible.

In order to do this we will need to know who is there and be able to explain to them the precautions to be taken and where property lines are located. Then if any damage is done proper authorities can be contacted.

For now I think these who voluntarily make themselves known are the ones to be allowed access. Eventually maybe a system can be devised for supervision of recreational uses paid for by the users.

Let us all be aware that these are not waste lands but that they are making a substantial contribution to our economy. With those so aware we will be happy to cooperate in sharing the recreational benefits.

William T. (Bill) Harrer

MONTANA COUNCIL
Neil Travis, Chairman
411 South E
Livingston, Montana 59047
Ph: (406) 222-6530

Stream Access--Public Hearing--Lewistown, Mt., May 15, 1976

As Chairman of the Montana Council of Trout Unlimited representing over 560 members in the State of Montana and acting as a spokesman for the National Organization of Trout Unlimited which is comprised of over 20,000 members, I welcome this opportunity to address this committee on stream access.

As you gentlemen are well aware access is of prime importance to all recreational users. This applies to campers, hunters, hikers, bird watchers or trout fishermen. It does Montana citizens or our out of state visitors precious little good if just across a field runs the best trout stream in the nation if that field is privately owned and access is deried by that land owner.

It is not the intention of the Montana Council of Trout Unlimited to request that this committee formulate legislation that would in any way abridge the rights of individual property owners. We are hopeful that through co-operative agreements between land owners, sportsmens groups and the Fish and Game Department of the State of Montana that access to streams can be obtained and maintained. It is however imparitive that these groups work together to assure continued ample access for all the people.

The Montana Council of Trout Unlimited would like to thank the Department of Fish and Game for the fine job that it has done in the past in obtaining access and we look forward to working with them and the legislature in the future to maintain and upgrade this program. Thank you.

Respectfully submitted,

Neil M. Travis
Chairman, Montana Council

STATEMENT

BEFORE

LEGISLATIVE SUBCOMMITTEE ON AGRICULTURE LANDS

Lewistown, Montana

May 15, 1976

- - -

My name is MONS TEIGEN. I am Executive Vice President of the MONTANA STOCKGROWERS ASSOCIATION, an organization of cattle producers throughout the State of Montana. The "access problem," which your committee has under study is actually more apparent than real. According to the information your committee has already accumulated, the vast majority of state land lessees allow recreational use of their state land and their private land as well. From this I would submit that the "problem" has been overstated.

Montana is a large state. It is a range state and if you could observe a land ownership map you will see it is a state with a great diversity in ownership and size of tracts. Whatever occurs on one piece of land quite probably will occur on the adjoining tract. If, for example, the state tract is open for public use, the private tract associated with it will be open as well. Notwithstanding this fact, we must admit that access is, upon occasion, denied. Why is this so?

1. Numbers of people are the major problem. A few hunters are a pleasure to have around but when a red jacketed hoard of people descend on the rancher on opening day you can visualize the problem. In many instances, recreational use is a year-long affair. Beginning with fishing season opening in mid-May, extending through the summer; followed

by the upland bird, big game and water fowl seasons which end in December - to be followed by the snowmobiler, cross-country skiers, etc. - not to mention the bottle collectors, berry pickers, firewood cutters and back-packers - just to name a few.

2. Certain types of recreational use pose more of a problem than others. Off-road vehicle use on moist or fragile soil, creates real erosion problems. In their effort to recover antique bottles and other artifacts, some individuals will literally undermine a structure to make a discovery. Fishermen pose less of a problem to the environment than most other uses. You can't drive along a stream bank and fish at the same time.

Despite these problems, the great bulk of Montana farmers and ranchers do permit recreational use of their lands and associated state lands. A mandate by the Legislature, requiring lessees to do what they are already doing for the most part, could cause an adverse reaction that would lead to less acres accessible than there are presently. Based upon past experience, the average Montana rancher believes that a moderate degree of recreational use of his private property land is acceptable and even beneficial. Although the game belongs to the state, much of its forage comes from private land. For this reason alone, a harvest is called for so hunting supplies a real need.

The suggestion has been made that the State Land Department negotiate a recreational easement with the Fish and Game Department, a procedure which has been employed in New Mexico. While such a program might have merit on certain key tracts of high value

recreational land, I would question its desirability for the great bulk of state lands. The fee negotiated would no doubt be a considerable sum of money which would have to come from sportsmen's fees. I believe these monies can be far better spent improving relations with landowners to increase access on private lands together with state lands.

A recent innovation in wildlife management is the management area such as the Square Butte Management Area in Judith Basin County near the Highwood Mountains. This is a joint effort by the private landowners, Fish and Game and the Forest Service, to exert some control over the entire area and at the same time provide a valuable recreational experience to the hunter. The Landowner-Recreationist Committee of our association has encouraged the development of more of these types of areas. These developments are limited by the number of game wardens available to police them. Our committee has suggested to Fish and Game that biologists be deputized and authorized to act as wardens during the hunting season. Although some steps have been taken in this direction, there are still not enough wardens to expand the management area concept appreciably. The answer to this question is simply more wardens and it is within your authority to change this situation. The game warden is one of the best friends the rancher has and if more were available, there would be fewer landowner-sportsmen confrontations and relations could improve. It is interesting to note on the game management areas owned by Fish and Game, severe restrictions are placed upon the use of the area by hunters, especially with regard to vehicles. What's more, these restrictions are enforced! The rancher has no warden staff to assist him in policing recreati-

onists, but an expanded warden force in the general area would certainly help.

Our organization has in the past and will continue to work with any responsible organization interested in improving the relations between recreationists and landowners. Needless to say, some stockmen are "turned off" when sportsmen's groups take a position on other issues contrary to the best interests of the livestock industry.

In Montana public access is not something which should be demanded. Most ranchers would prefer to treat their hunter friends as invited guests rather than as intruders.

Our association does not believe there is need for specific legislation pertaining to access. In fact, we feel that legislation would be unwise at this time. We have held meetings with interested sportsmen and believe that there exists a great opportunity to solve our problems without taking the legislative route.

An expanded warden force would be a help. A realization on the part of the Legislature that the private landowner IS important and his views, as well as his tremendous contribution to Montana's economy, should be understood. Enacting legislation forcing public access on or over these lands is a poor way to cement good relations. We submit that no special legislation is needed at the present time.

MONTANA LEGISLATIVE COMMITTEE ON ACCESS

The Lewistown Rod and Gun Club would like to thank the members of the legislature for this opportunity to discuss access problems in Montana.

We would first like to emphasize that there is an access problem in Montana.

County Commissioners and other public officials have welcomed public road closures in the past because it reduced costs and workloads for the county. Efforts to reopen or even document the status of many of our roads are hampered by poor records on closure, maintainance, etc. These efforts are generally met with apathy also. There is a general lack of guidelines for the public officials or the private citizen to follow in their efforts to gain reasonable access. The legislation should provide these.

Reasonable access must be xp provided to and from public land. This access can be a designated road, footpath, trail or snowmobile route depending on conditions such as distance, terrain, land use and time of year to mention a few. This access should complement the Off Road Vehicle regulations now being developed by our public land managing agencies.

We commend the Montana Fish and Game Department for their efforts in obtaining access to our streams and other areas. We urge them to continue and that the members of the legislature credit and assist them in further success in this endeavor. It is one of the bright spots in our Montana access problems.

Thank you,

R. L. (Hap) Kramlich, Pres.
Lewistown Rod and Gun Club

White Sulphur Springs, Mt.
May 14, 1976

Reaction to "Public Access to Public Lands" on the part of Lessees is understandable, since experience with uncontrolled access has generally been unpleasant and in many cases interferes with the economic purpose for which the land is leased. Most of the previously proposed bills appear to have been directed toward providing uncontrolled access which, in itself, leads unfortunately to littering, destruction of property, and bitter recriminations.

Not all state lands have recreational values. Before the question of specific access can be resolved a standard criteria should be established in order to identify those parcels which do have recreational potential, those which are marginal, and those which have none. However these values must be weighed against the basic purpose for which school lands are held by the state -- provide financial support for our school system. Should such use be considered, close proximity to a public road must be a prerequisite and some of the costs involved should be borne by those using the land.

The concept of forcing entry through private land is repugnant to and will consistently be resisted by property owners.

The only way the public may use private land for any purpose is by leasing it of first obtaining the permission of the owner. It follows that if use is sought of state land by someone other than the lessee, then permission of the lessee should be first obtained.

If state land has value for recreational purposes, such use can be better

May 14, 1976

controlled and administrated through the holder of the lease and certainly access would be according to compatibility with his primary use of the land, and this is as it should be.

One of the most distressing aspects of this controversy is the inference that public access, per se, is not so much the basic issue as how we are going to give access and under what terms. There appears to be an undercurrent of appeasement of the so-called sportsmen interests taking form in proposals and hearings such as this. We should first resolve if uncontrolled public use of school lands by the general public is in the best interests of the trust under which these lands are held, if limited non-paying use is warranted, or if a controlled fee or other basis is realistic. Then and only then should methods of implementation be discussed.

These comments have been concerned primarily with state school lands, however the concept of forcing entry over private land to reach federal land is just as repugnant. If the need is real, in the public interest and can be proven in court, eminent domain proceedings is the avenue available.

R. E. Saunders Jr.

R. E. Saunders Jr.
Director, Meagher County Preservation Ass'n.
White Sulphur Springs
Montana 59645

ADDRESSED TO THE STATE LEGISLATIVE COUNCIL
LEWISTOWN, MONT. MAY 15, 1976

I AM GLEN C. CHILDERS, PRESIDENT OF THE GARFIELD-McCONE LEGISLATIVE ASSOCIATION, AN ORGANIZATION OF ONLY LANDOWNERS WITHIN THE TWO COUNTIES. I AM ALSO A LIFETIME RANCHER IN GARFIELD COUNTY AND AN OUTFITTER FOR THE PAST TWENTY FIVE YEARS. I FEEL MY EXPERIENCES WITH BOTH LIVESTOCK AND THE RECREATIONEST QUALIFIES ME TO OFFER THE FOLLOWING TESTIMONY. I CHOOSE TO LIMIT MY STATEMENTS TO THREE ISSUES. THE LACK OF KNOWLEDGE OF SOME LEGISLATORS. THE ULTIMATE INTENT OF THE USE OF OUR SCHOOL LANDS AND THE DEPARTMENT PRIMARILY RESPONSIBLE FOR PUBLIC RELATIONS ENVOLVING PUBLIC ACCESS.

THE FEDERAL ENABLEING ACT SET ASIDE OUR SCHOOL LANDS, WHICH IN MONTANA CONSISTS OF APPROX. A MERE FIVE MILLION ACRES OUT OF NINETY THREE MILLION, EIGHT THOUSAND NINE HUNDRED ACRES OF THE TOTAL ACRES OF MONTANA FOR THE SOLE PURPOSE OF FINANCING OUR EDUCATIONAL SYSTEM. NOT FOR RECREATION. AGRICULTURE IS THE NUMBER ONE INDUSTRY IN MONTANA, THEREFORE, AGRICULTURE IS THE MAJOR SOURCE OF REVENUE FOR OUR SCHOOLS AS WELL AS A TAX BASE FINANCING OTHER STATE ACTIVITIES. LEGISLATED ACCESS FOR RECREATION WOULD NOT BE COMPATIBLE WITH THE EXISTING OPERATION ON THE MAJOR PORTION OF OUR SCHOOL LANDS.

UNKNOWLEDGEABLE LEGISLATORS ARE REPEATEDLY AND IN MOST CASES UNSUCCESSFULLY INTRODUCING LEGISLATION, AT AN EXORBENT EXPENSE TO THE TAXPAYER, TO FORCE THE PUBLIC UPON LANDS BETTER SUITED FOR AGRICULTURAL PURPOSES. DURING THE LAST LEGISLATIVE SESSION IT COST APPROX. $2000.00 TO ACT ON EACH BILL INTRODUCED, NOT CONSIDERING THE EXPENSE TO THE MORE KNOWLEDGEABLE LANDOWNER WHO MADE NUMEROUS TRIPS TO THE CAPITOL BUILDING EXPRESSING HIS OPPOSITION. SURELY IF WE ARE TO LEGISLATE OURSELVES INTO AREAS WE ARE NOT WANTED, AS GOOD SPORTSMEN, WE CERTAINLY WOULD NOT BE AT EASE AND RECREATION IS FOR RELAXATION, NOT EMBARRASSMENT. SO WHY NOT TAKE A MORE REALISTIC AND COMPATIBLE APPROACH?

THE LANDOWNER IS THE MOST PROUD POSSESOR OF PROPERTY OF ANY PROPERTY OWNER. IF YOU QUESTION THIS TAKE A LOOK AT THE COUNTRY SIDE AND COMPARE IT WITH OUR CITIES. HE IS NOT SELFISH AND IN MOST CASES FULLY REALIZES AND APPRECIATES THE NEEDS AND DESIRES OF OTHERS AND READILY ACCEPTS THEM UNDER COMPATIBLE CERCUMSTANCES. IN MY MANY YEARS AS A RURAL RESIDENT I HAVE NOTED A MARKED MIGRATION FROM THE RURAL AREAS TO THE UBRAN AREAS BY THOSE WHO WERE NOT CAPABLE OF COPING WITH THE ELEMENTS OR FOR REASONS BEYOND THEIR CONTROL WHICH WE ARE ALL FAMILIAR WITH. IT APPEARS NOW THAT THOSE SAME PEOPLE OR THEIR DECENDANTS ARE ATTEMPTING TO RETURN AS PART TIME POSSERORS WITH NO RESPONSIBILITIES.

OTHER THAN POORLY CONCIEVED UNENFORCEABLE LEGISLATION WHICH CALLS FOR MORE OF THE SAME THERE ARE OTHER MEANS OF GAINING PUBLIC ACCESS. TO MENTION A FEW. THE STOCKMEN HAVE A PROGRAM, I BELIEVE IN THE SQUARE BUTTES AREA, BETWEEN THE LANDOWNER AND SPORTSMEN WHEREBY THE SPORTSMAN MUST PRESENT A QUALIFICATION CARD ALLOWING HIM ACCESS. THE S 60 PROGRAM, NOT PUBLICISED, IMPLEMENTED BY THE BUREAU OF LAND MANAGEMENT AND WORKING QUITE WELL WHEREBY THE LANDOWNER/PERMITTEE MAY CLOSE HIS PRIVATE HOLDINGS LEAVING HIS GRAZING PERMIT AREA OPEN TO RECREATION OR VISA VERSA. BY THIS MEANS THE STOCKMAN IS PROTECTING HIS LIVESTOCK AT ALL TIMES AND NOT HAVING TO SUPERVISE THE UNRESTRAINED RECREATIONALIST. THE MOST IMPORTANT PROGRAM YET TO BE FULLY IMPLEMENTED BY THE DEPARTMENT, IN MY THINKING, FULLY RESPONSIBLE FOR THE LACK OF COMPATIBLE PUBLIC ACCESS, THE MONTANS FISH & GAME DEPARTMENT, IS AN EDUCATIONAL PROGRAM QUALIFYING THE RECREATIONALIST. TO MY KNOWLEDGE AND FROM A RELIABLE SOURCE ONLY THE MERE SUM OF $8000.00 WAS BUDGETED BY THE GAME DEPARTMENT FOR THIS FISCAL YEAR FOR ACTUAL OUT IN THE FIELD PUBLIC RELATIONS. THIS IS NOT A VERY LARGE SUM AND POSSIBLY EXPLAINS WHY PERSONEL OF THE GAME DEPARTMENT HAS FAILED TO APPEAR WHERE CONCERNED LANDOWNERS WERE ATTEMPTING TO SOLVE PUBLIC ACCESS PROBLEMS.

I FIRMLY BELIEVE IF OUR GAME DEPARTMENT WOULD SPEND A HALF A MILLION DOLLARS ON AN EDUCATIONAL PROGRAM IT WOULD NOT BE NECESSARY, IF IT IS NECESSARY, TO SPEND MILLIONS TAKING AGRICULTURAL LANDS OUT OF PRODUCTION SUCH AS THE MT. HAGEN RANCH. MONTANA HAS MANY MILLIONS OF ACRES SUITABLE FOR RECREATION IF ONLY UNDER COMPATIBLE CIR-

CUMSTANCES.

IN SUMMERY:--MONTANANS ARE GREAT PEOPLE. THEY DO NOT NEED LEGISLATION OR ATTEMPTE LEGISLATION, AT A GREAT EXPENSE TO THE TAX PAYER, FORCEING THEMSELVES UPON ONE AN OTHER. THEY NEED ONLY UNDERSTANDING THRU AN EDUCATIONAL PROGRAM WHICH WE HAVE BEE PAYING FOR AND NOT RECIEVING.

WITH DUE RESPECT TO OUR PRESENT GAME COMMISSIONERS PERHAPS OUR GAME DEPARTMENT SHOULD BE RECONSTRUCTED BEGINNING WITH OUR COMMISSIONERS. THE ONLY QUALIFICATION RELATED TO LANDOWNER/SPORTSMEN RELATIONS OF OUR EXISTING GAME COMMISSIONERS IS O COMMISSIONER (QUOTE) SHALL BE EXPERIENCED WITH THE BREEDING AND MANAGEMENT OF DOMESTIC LIVESTOCK. I HAVE A THIRTEEN YEAR OLD GRANDAUGHTER WHO MEETS THAT QUAL- IFICATION.

IF WE DO NEED FURTHER LEGISLATION LET'S ENACT LEGISLATION PLACING A MINUMUM OF T QUALIFIED ACTIVE LANDOWNERS DERIVING THE MAJOR SOURCE OF THEIR INCOME FROM AGRIC TURE ON OUR GAME COMMISSION. THEY ARE KNOWLEDGABLE AND FAMILIAR WITH LANDOWNER P LEMS AND MORE QUALIFIED TO NEGOTIATE WITH OUR FELLOW SPORTSMEN, DISREGARDING UNN ESSARY LEGISLATION.

RESPECTFULLY,

GLEN C. CHILDERS

ATTACHMENT 10

Utica, Montana
May 15, 1976

Public Access Hearing
Legislative subcommittee on Agricultural Lands
Lewistown, Montana

Sirs:

The following are my comments regarding public access to State and Federal lands.

1 Specific state and federal lands, such as camp grounds, parks, lake sites and picnic areas, should be set aside for recreational use and used for that only. These areas should be inspected and regulated to protect them from ecological damage. This is essential where humans in numbers trespass on native areas or they well be destroyed as our fellow man has small regard for property other than his own.

2. State and federal land that is leased to private individuals paying a fair rental fee would be controled by these individuals as they desire to the extent that the land is maintained and protected to remain in as good condition or better than when the lease was granted. These leases are not cheap, and are bringing in substantial revenue to the state, especially for the schools. If the access is excessive and destructive, these leases will be dropped and the revenue lost. Agriculture at the present time can not tolerate any burden of added expense. If the land is ruined by traffic around on it, if animal are lost through carelessness, if fires are carelessly set during dry seasons and and neglected, all these problems will detract from the value of the lease and leases will be dropped. Often the land isn't prime, is witnout water and wouldn't be useful to anyone other than the adjoining land owner. Therefore leases are paying for the priviledge of useage and they should have control of the access powers.

Does the general public realize that two, six inch tire-tracks smash or break off an acre of rangeland grass, or 43,560 square feet, in somewhat over eight miles of driving when hunting a spot for deer or pheasant? This grass is money to ranchers who paid for it, protected it and needed it for pasture for livestock.

Out of state people comment how lucky they are in Montana to have access as now andthey pay dearly for it, yet they are the most considerate. Why are Montanans wanting so much more for nothing?

Thank you for your consideration.

Sincerely,

Kenneth L Rosman

Kenneth L Terry

Phillips County Livestock Association

Malta, Montana

MAY 8, 1976

1976

LEGISLATIVE COUNCIL
SUB COMMITTEE ON AGRICULTURAL ACCESS

GENTLEMEN:

THE FOLLOWING RESOLUTION WAS PASSED AT OUR ANNUAL SPRING MEETING OF THE PHILLIPS COUNTY LIVESTOCK ASSOCIATION HELD IN MALTA, MAY 8, 1976:

WHEREAS PHILLIPS COUNTY WITH 3,336,320 ACRES CONSISTS OF 40% PUBLIC LAND, AND
WHEREAS ACCESS TO PUBLIC LAND IS OF GREAT INTEREST AND GREAT CONCERN, AND
WHEREAS RECREATIONAL USE OF STATE AND FEDERAL LAND HAS CREATED NO PROBLEMS, WITH FEW EXCEPTIONS DUE TO LEGITIMATE COMPLAINTS,
THEREFORE WE RESOLVE THAT NO SPECIAL LEGISLATION IS NEEDED WITH REGARD TO PUBLIC ACCESS.
BE IT FURTHER RESOLVED, THAT THE TRUST CONCEPT OF STATE GRANT LAND BE REAFFIRMED, AND IF ANY CHARGES ARE DEVELOPED FOR RECREATIONAL USES, SUCH CHARGES MUST BE EQUITABLE WITH OTHER PAID USES OF OTHER STATE GRANT LAND.

PHILLIPS CO. LIVESTOCK ASSN

William R. French

WILLIAM R. FRENCH, PRESIDENT

THOMAS D. THOMPSON, SEC.-TREAS

LETTERS RECEIVED PRIOR TO THE HEARING

SKYLINE SPORTSMEN'S ASSOCIATION, INC.

P. O. BOX 173 BUTTE, MONTANA 59701

April 28, 1976

Senator Carroll Graham, Chairman
Subcommittee on Agricultural Lands
c/o Deborah Schmidt
Montana Legislative Council
Helena, Montana 59601

Dear Senator Graham:

We are witnessing a change in the accessibility to public land in Montana, and it is not improving. Recently, many roads that have been open to the public for many years have been closed, at a time when more Montana citizens are seeking areas for outdoor recreation. The road leading from Interstate 15 near Melrose to Brown's Lake in Beaverhead County was recently closed by a landowner whose property is crossed by the road. This road had been open to the public for over forty years to this writer's knowledge, and it leads to a lake surrounded by land owned by the Montana Fish and Game Department. The land surrounding the Department's holding is national forest land.

Another road up Thompson Creek, also in Beaverhead County, has been closed. As both of these roads have been in use for many years and are the only routes to public land, they should be kept open for the public.

Also, fishing streams that can be entered from public land should be open to angling between the high water marks. An angler wading down the middle of a stream does not damage the land on either side. We do not dispute an owner's prerogative to post his land against trespass, but just as strongly we protest his authority to prohibit access to public land or public water.

Very respectfully,

SKYLINE SPORTSMEN'S ASSOCIATION

D. Roscoe Pickerson
Secretary

cc: Hon. Al Luebeck

P.O. Box 182

April 9, 1976

Senator Carroll Graham
Chairman Subcommittee on Agriculture
c/o Deborah Schmidt
Montana Legislative Council
Helena, Montana 59601

Dear Senator Graham:

Our Association has studied the problem of public access to public land and water in relation to the intent of HJR 29 and SJR 26 asking for interim study of the access problems in Montana.

Our Association feels that the existing government agencies and laws have failed to protect the public right of ingress and egress to public land and water. Therefore we respectfully suggest the Montana Legislature seriously consider both reform and new laws to protect the public right to hunt and fish, and other recreation on public land and water as follows:

1. All existing county roads and those that have been used by the public should be forever enjoined from closure by the Counties where they lead to public land and water. Some flexibility should be provided in such a law, e.g. land management agencies could close the road if needed for resource protection. Also, the Counties might abandon the right of way if a government agency would maintain the road for public right of way.

2. Each county provide, at cost, to the public a map of all current legal roads in the county.

3. The State Legislature make legal provisions for public recreation use of State of Montana lease lands.

4. The State Legislature make all waters in the state a public thoroughfare for fishing recreation.

5. The State Legislature mandate that there be a public right of way reserved for public ingress and egress to public land and water along section boundaries where needed for proper recreation use of the land and water.

We appreciate the opportunity to offer suggesstion for the interim study of access problems. Please make this letter part of the study, and include a copy of this letter in your report to the Montana Legislature.

Sincerely,

Richard Day

Richard Day, President

cc: Representative Al Luebeck

Gentlemen:

This letter is in regard to the public hearing on the subject of public access t State and federal public lands scheduled for May 15, 1976 in Lewistown.

I certainly contend that state and fede lands, specifically timbered and grazing la should be accessable to public use and recreation during the off-grazing season (October 15 through June 30).

We have just such an example here in Yellowstone County where the lessee has forbidden use for recreational purpose This applies to Sec. 6, T2S, R7E and Sec 1, 2, 3, 9, 10, 11, 12, T2S, R6E.

In early Fall of 1975 a local meeting was held in this community regarding use and responsibilities of state land lessees At that time Mr. Larry Pyke of the State forestry office in Missoula informed us the public had access for recreational purposes to the above described lands. Sin

that meeting, Mr. Ted Giesey of the State Forestry office in Bozeman, said that statement was in error. I quickly came to me the State personnel should be informed before statements are issued.

I have sub-leased a State section since 1969. The former lessees of the previously mentioned State sections never refused access during the elk hunting season. The refusal has come from the present lessee who has [illegible] the purchase, the lease [illegible] [illegible] use of State hunting [illegible].

Since it is resident taxpayers money that supports and maintains these state and federal lands we should certainly have the right to use them. We also pay the salaries of State personnel with conflicting statements regarding access.

Very Truly Yours,
James Kirk
Route 2 - Box 170
Bozeman, Mt. 59715

Brusett, Mont.

May 11, 1976

The Subcommittee on Land Access
℄ Legislative Council
Capital Station, Helena, Mont.

Dear Sirs,

On this subject of recreational access to State, private and public lands----first, I don't know of anyone denying people access to any public lands. That is nothing more than propaganda put out by the Fish and Game Dept. and the Communist hate groups in the state. Any time we let people go across our private land they seem to have the idea that they can shoot anything that moves while they are going across and do just that. Here in the badlands us natives have tried for the last 10 yrs. to get the Fish & Game Dept. to cut us natives to one deer but they wouldn't do it---they just kept sending hunters by the thousands until now our deer population is down to almost zero. If we hadn't been able to keep most of the hunters off our private land & state school sections, there wouldn't be enough deer left for seed now. These people that come here hunting, drive all over the range digging up the grass with their wheels and throwing beer cans out as they go in the grass. The Gov't. range is covered with beer cans every place they can drive a pickup or honda. There has been so many of them we couldn't have let them all in if they had all been personal friends, as they would have mashed all the grass down. So we hope that you men will use some reason and not be influenced by the Fish & Game and the Communist hate groups and before you recommend making a law to allow access to state & private lands, you will realize that these wild animals have to have some place to go. You can't have a man with a gun in every brush pile on every acre of land and have

any game survive. Also, if the state is going to let the hunters drive all over these state school sections and mash the grass all down, you will have to lease them for about half the money that you are now charging us for them because they are only going to be worth half as much. Most of this trouble lies with the mismanagement of our State Fish and Game Dept. The out of state hunters have not been the big trouble at all----our big trouble is the thousands of rats that come in here from those big towns in the western part of the state.....all coming and getting two deer each and they have no respect for anybody's property. Our State Fish and Game Dept. wouldn't be capable of managing one chipmunk if someone put him in a cage for them. First, they would try to sell at least 6 hunting licenses on him and if that didn't get him, they would turn the coyotes in on him.

Sincerely,

Dave Huston

LETTERS RECEIVED SUBSEQUENT TO THE HEARING

May 14, 1976

Subcommittee on Agricultural Lands
C/O Legislative Council
Capitol Station
Helena, Montana 59601

RE: Public Access to Public Lands (Public Hearing May 15 -- Lewistown)

Sirs:

As president of the Southeastern Montana Livestock Association, I appreciate the opportunity to submit written testimony on the problem of public access to your committee on behalf of our membership in the nine southeastern counties. Unfortunately, we as landowners often fail to present our problems and then feel ignored when no solution is forthcoming.

Public access in our area where private land predominates really boils down to landowner-recreationist relationship on which any landowner can go on at great length; but to save your time I would like to follow your outline as it pretains to our area.

I know of no case of denied access, however closing of adjoining private land effectively limits the use of the public because usually the best hunting is on private land and also where the land is interspersed it is difficult for a hunter to keep track of where he is. Also to drive into a ranch waving a map of all public lands will guanantee closing of the ranchers private land to that hunter and possibly the more circumspect that follow. Other persons non grata are cyclists because of noise disturbing livestock and the trails they cause leading to erosion; snowmobiles because of noise and when snow is on the ground livestockaare usually being fed concentrates and will follow vehicles hoping for another snack. Out-of-state hunters are usually much more considerate than locals and a group of local bow hunters we have are just tops.

Land is closed by landowners for many reasons. An area of a ranch will be closed because livestock are involved; not just to keep them from being shot but more often to keep them quiet. Newly-weaned calves are wild and we allow no one in a pasture in which they are turned loose. It is important to keep market cattle from being disturbed causing lost weight and lost income to the landowner. On our ranch we close land that is close to the buildings to all but bow hunters we know. We also remove livestock from one area and allow anyone to hunt except people we have found to be a problem.

Entire ranches are closed because of bad experiences by landowners. The claim is always made that very few hunters are responsible, however, it happens on most ranches most years. I think some specific things that have happened to us will make the point.

Last year several gates were left open and our horses (7 head) were on a federal highway seven miles from home at night. Two years ago a trapper taking varmits on our land had animals and traps stolen and other pelts destroyed by hunters killing the animals with highpowered rifles. Another year we had four head of 450-pound calves disappear--undoubtedly taken by people using hunting as a cover. A horse

run through a fence and cut so badly he had to be destroyed--a bull shot and killed --fences cut and cattle mixed. The list goes on and on.

But let's get down to solutions that would make the conflict bearable to most ranchers, and we feel recreationists should be willing to live with:

1. Have the Fish and Game Department meet with farmer and rancher groups in each area and tailor the season to what works best for them. To keep crushes of hunters out of early or late areas, sell licenses for specific areas only. Shorten seasons and/or make them coincide in a specific area. It is a real irritant to ranchers that the fall season being the freest time of year as far as work goes, we have to sit home for two months because of hunters. My special peeve is to sit down to Thanksgiving Day dinner each year only to have to go chase down some hunter.

2. At some future time, if deer population continues to decline and the crush of hunters becomes heavier, a system of quotas in each area will have to be devised.

3. Limit motorcycles and snowmobiles to specific areas or at least to areas where livestockare not being pastured.

4. Limit vehicles to well-travelled trails and roads with further access being on foot or horseback. This should apply to all lands to reduce damage. Also, in wet weather vehicles should be confined to surfaced road only because the ruts are long lasting and in steep areas cause erosions.

5. Allow ranchers to close some federal lands if comparable land is left open to recreationists.

6. No hunting on private land without permission of the landowner.

Some of these items are laws but penalties are minor and enforcement nil. Therefore, we recommend the penalties be loss of hunting license for that year and the following year and fine; or stiff fine if hunting is not involved. Also that the Fish and Game Department be responsible for enforcement taking that burden from the landowner. We feel part-time enforcement officers during hunting season would help as the areas are too large for present wardens to cover effectively. Also the Fish and Game Department should be required to make recreationists aware of all regulations.

I repeat, the only solution is a better relationship between recreationists and landowners so both private and public lands are open and this can only be accomplished if the rights of private property both land and livestock are recognized and conditions improved.

Sincerely yours,

William Bickle, President
Southeastern Montana Livestock Association
Ismay, Montana 59336

Augusta, Mont.
May 15, 1976

Senator Carroll Graham
Helena, Montana

Dear Senator,

As a landowner my wife & I would like to go on record as against all 3 bills namely, H.B. 79, H.B. 98 & H.B. 601. We have many neighbors who are against them, also.

Very truly yours,
Mr + Mrs Stephen
Mosher

FOX HILL RANCH

TED AND LOUELLA PERRINE

JUDITH GAP, MONTANA 59453

May 15, 1976

Legislative Council
Subcommittee on Agricultural Lands
State Capitol
Helena, Mont. 59601 Attention: Mr. Bob Person, Research Director.

Dear Sirs:

I attended your meeting in Lewistown this A.M., but was forced to leave before I had a chance to speak on the matter of access to public lands. I would like to comment on the tenor of the remarks I heard, and then address the matter of access to federal lands, which was scarcely considered up to the time I had to leave the meeting. While I speak only for myself, I am chairman of our local chapter of the Farm Bureau Tax Committee, and last year our membership did approve a resolution bearing on recreation on state land.

I believe state land should be evaluated, and leased, with respect to three criteria: crop productivity, grazing potential and recreational value. In a lease, the lessee might opt for any or all of these uses, and should be charged accordingly. If he chooses not to lease the recreational rights, he should be required to yield, and to be compensated for, right of public access to the land. I do not agree with the first speaker that recreational value should be set at 10% of the total lease. in some cases, the recreational value m may approach the total value of the lease.

The state should be compensated for the recreational value of its lands which are open to the public thru a surtax on hunting and fishing licenses, administered by the Fish & Game department, and part of the money used to acquire rights of access.

Our local Farm Bureau resolution which I previously alluded to was to the effect that where the lessee permitted recreational use of his leased land, his fee should be reduced accordingly.

I believe of much more significance to the hunting public is the matter of access to federal land. This problem is of particular importance in the western part of the state, such as the west side of the Bitterroot valley. Here the terrain is such that any practical access to the canyons is precluded unless right-of-way accross private land is obtained. Even in 1958, when I hunted in this area, these private access roads were barred by locked gates.

In my opinion, the Forest Service and the logging industry has conspired to treat federal land as their own private preserve, and have been frightfully remiss in their obligation to the public. I would like to relate a bizarre incident which happened to me to illustrate this point. I believe it was in the summer of 1958. I had been doing a good deal of fishing up the Blue Joint, which was then good fishing and also excellent game country. There was a logging operation going on quite well down the valley, but one could drive quite a few miles past this operation on long-established roads, and get into excellent country. In the latter part of the summer (presumably) the loggers bulldozed out a cut across the road so the last 5 or 10 miles was cut off. I was pretty mad about that, but continued to prospect the country. The day before elk season opened, I was delighted to find that the cut had been closed, and the road was travelable. About 7 a.m. on opening day I went in, and at the upper end of the road, found where 2 elk had been freshly butchered. The next day, the road was bulldozed out as before. I was fit to be tied, of course. One of my neighbors, who enjoyed a good brawl, invited Thurman Trosper(then forest supervisor) and myself to dinner. Thurman and I soon got to it, he stoutly denying that any such situation would be permitted to exist, and I demanding a site inspection. Unfortunately, Thurman was unable to oblige, and there the matter rests to this day. I did however writeSenator (I believe)Murray, who was on a committee "activly investigating the problems of access" with results which are presently apparent.

An elegant but extremely expensive solution to the access problem would to construct a perimeter road around the federally owned mountain land. Ranchers I have talked to do'nt like this idea, suggesting that they prefer to treat the back country as their own private preserve. This is an entirely human attitude with which I sympathize. A good example is to be found at the ~~xxx~~ entrance to Sweetgrass canyon in the Crazy mountains, where the problem of access is particularly acute.

I would like to close byconsidering the ethics of the problem. I am certainly 100% for private land ownership. However, the land was obtained by armed robbery from the indians and subsequently given away by a government uninhibited by problems of population growth. The amount of land is finite. Unlike air and water, it does not recirculate for the benefit of all. I believe therefor that an absolute title to hog land to the utter disregard of those who had the misfortune to be born a few generations too late, is a hard proposition to justify. While most Montanans have been generous in the extreme in sharing the blessings of their tenancy, I am afraid the sudden great influx of recreationists is tending to create the reaction of clutching our property rights to our breast, in fear of some horrible socializing dragon. Unfortunately, this reaction will in the end only hasten the end which we abhor. More than that, outdoorsmen are our friends, allies in our fight against gun confiscation, rugged individualists who understand our land and our love of it, and who will help in preventing unwanted urban encroachment and ridiculous environmental strictures. Yielding access rights generously and graciously will, i believe, be our most advantageous course.

Sincerely,

Theodore D. Perrine

Theodore D. Perrine

S AND SON

7-V RANCH

BRUSETT, MONTANA
59318

May 17, 1976

Carrol Graham, Chairman
State Legislative Council
Capitol Building
Helena, MT 59601

Dear Mr. Graham:

You are commended for your expert means of handleing the council hearing in Lewistown May 15 and after reading the document on your past studies it certainly indecates the amount of work that has gone into the study.

I do feel the game department are deserving of the critizism they recieve from the group,as well as you as chairman and hopefully the legislation will pass legislation correcting their actions this coming session.

I am having a propsed bill written now to change the commission to more responsible people. I firmly believe at least two commissioners should be landowners in the agricultural business. I believe this is the oppertune time for such legislation.

I do want to bring the following to you and your committee members but I did not want to address you with it at the hearing as we outfitters feel a public announcement would not be for the best interest of the state. The Outfitter Action group that brought suit against the game department in an attempt to declare SB236 unconstitutional are not associated with the Mont. Outfitters & Guides Assn. Our sole reason for entering the case as friends of the court, which is costing us money, is we feel our legislators should write the laws of Montana not the non-resident which in our reasoning is what they are attempting to do by filing the suit. We respect our legislators.

I would appreciate a complete copy of the hearing of May 15.

Thank you.

Sincerely,

Glen C. Childers

Augusta Mont
May 17-1976

Legislative Council
Helena, Mont.
Dear Sirs:-

I am writing opposing House Bill 79. It is very unconstitutional as it is depriving a person of his private rights as a land owner. Ask some of these city people if they would like to have us drive our cattle across their lawns on our way to market.

Yours truly
Norbert Dutton
Augusta, Mt. 59410

May 17, 1976

Subcommittee Agriculture
c/o Legislative Council
Capitol Station
Helena, Montana 59601

Gentlemen:

I'm writing you in regard to house bills 79, 98, and 601. I am definitely against these bills for various reasons. Providing public access to public and private land and waters is infringing on the private property rights of the landowners. I don't think that public access is necessary for our so called "sportsmen". The landowners pay a great deal in taxes on their private property and should have the right to "no tresspassing" if they wish. Many landowners will allow fishing and hunting on their private land, if asked. However, it only takes a few to spoil it for all when the "sportsmen" doesn't appreciate this privilege. After leaving trails of beer cans, papers and other trash and building a campfire without permission is more than enough evidence for the landowner to feel as he does about "no tresspassing." How would these committeemen feel if their personal residence was loitered as such? Neither would the appreciate people in their yards or digging in their lawns etc. Hopefully, this will help to open your eyes to see what the private landowner puts up with and why we are against public access!!

Sincerely,

William Mosher
Mrs. Mosher

Mr. & Mrs. William Mosher
Augusta, Montana 59410

Carter, Montana
May 19, 1976

Subcommittee of Legislative Council,
Capital Station,
Helena, Montana 59601

Re: Public access to Lands: HB79-HB98-HB601

Senators and Representatives of the
Subcommittee on Agricultural Lands

Gentlemen:

If it were not for the protection and propagation of fish and game on private property in Montana the supply of both would be greatly reduced. This supply comes mainly from farms and ranches. Such a lasting resource of fish and game can be maintained only on private property.

There is no record of a farmer or rancher killing quantities of fish or game and allowing them to spoil but there are plenty of authentic reports of other individuals doing just that besides killing livestock and leaving them.

Access thru private property and fenced property by the public would only contribute to

an already outrageous situation for farmers and ranchers. Vandalism and thievery are now intolerable on farms and ranches. If you question these statements please contact Sheriff John Sabo of Chouteau County, Fort Benton, Montana 59442. I do not mean to imply that this problem is more here than in any other county.

Any experienced individual should be unalterably opposed to HB79, HB98, and HB601 which condone and support the removal of private property rights.

Urban travellers should remember that if they are to have right of access on private property and leased property in the country the same should be true in towns and cities. That, not only farmers and ranchers, but any individual could park vehicles on their lawns in town or any area outside the confines of their homes and come and go at will

If such laws are passed in Montana, and landowners are aware of them, they would close each and every trail or road now open to a

more or less limited access so that no individual could claim "road rights" within five (5) years or any other period of time!

Individuals who object to private property rights in Montana or in the United States of America may have access to many countries on this Earth where there are no private property rights at all. My wish is that they dwell there forever.

Pride of private ownership is the major incentive for all people to do right and well for all mankind and preserve our rightful heritage. Farmers and ranchers must not be prevented by laws from continuing as the historical foundation of this heritage.

Respectfully submitted,
R. C (Ray) Tahi
Carter, Mont 59420

Augusta Mont
May 15. 1976

Senator Carroll Graham
Dear Sir

We are very much
against
H B 79
H B 98
H B 601
They would be an almost
impossible situation to many
ranchers in many cases

Yours Resp.

Wallace R Bean
Fern S Bean

May 19, 1976

Subcommittee on Agricultural Lands
c/o Legislative Council
Capitol Station
Helena, Montana 59601

RE: Public Access to Public Land

Gentlemen:

Our organization feels that there is no one solution to such a complex problem and that regardless of the decisions reached there will still be the hard core, so called sportsman, that will ignore all rules and regulations, either through ignorance of the problem or through malice. We feel that the landowners do not necessarily close their land because of hunting but because of the lack of time to police the hunters. Land owners lease public land on a competitive basis and therefore should have control of the hunting. The land owner - lessee should also have control of the type of vehicles that enter land under his control. During dry seasons, hunting should be regulated, access to land being cropped should be denied at all times because of the fire hazard to standing crops and the damage to newly seeded crops by vehicles. No access should be allowed on grazing land until the livestock have been removed. Because of the extent of cattle rustling in the state it is now necessary to stop all vehicles traveling on back roads. This problem would be compounded by the issuing of maps and uncontrolled hunting on public land. If hunting is to be allowed without rancher control then it will be necessary to have a source of funds to pay for policing state land to keep hunters, picnickers, etc, off adjoining private land. One possible source of funds would be to take a share of the hunters license fee and allocate it for policing state land. The rancher is paying for the use of state land, so it only seems fair that the sportsman should do likewise.

Stillwater County Agricultural Legislative Assn.

Hector E. Rodgers, Secretary

HER:rjn

BUFFALO CREEK COOPERATIVE STATE GRAZING DISTRICT
Suite 319 Securities Building
BILLINGS, MONTANA 59101
(406) 252-7127

May 19, 1976

The Montana Legislative Council
Capitol Station
Helena, Montana 59601

Re: Public Hearing held in Lewistown, Montana, on
Saturday, May 15, 1976
Discussion of Mandatory Access across private land
to State or Federal Land by the General Public

Gentlemen:

As secretary of the Buffalo Creek Cooperative State Grazing District, I have been directed by the Board of Directors of said Grazing District to write a letter concerning the above topic. One of the directors of the Grazing District attended the above meeting and felt that the topic was well discussed and was a very worthwhile meeting.

The Board of Directors, which represent approximately 60 landowners in Yellowstone County, wish to voice their opposition to any legislation which would require a private landowner to allow entry or access across private land by members of the general public to reach state or federal lands. The Board of Directors oppose any legislation requiring mandatory access for reasons which were thoroughly brought out and discussed at the meeting held in Lewistown.

Thank you for any consideration which you give to the view expressed herein.

Sincerely yours,

Vicki W. Dunaway

VICKI W. DUNAWAY
Secretary-Treasurer

VWD:bjb

Highwood, MT 59450
May 19, 1976

Interim Committee on Agriculture &
Natural Resources
c/o Legislative Council
Capitol Building
Helena, MT 59601

Gentlemen:

After listening to the testimony given at your land access meeting at Lewistown on May 15, 1976, I would like to make the following recommendations.

1. Clarify and publicize the liability status of the landowner regarding recreationists. If landowners are liable as long as no charge is made, then pass legislation to clear them so far as recreationists are concerned.

2. Broaden the off-road vehicle use law to include all recreationists and not just bird and big game hunters as is the case today.

3. Have Fish and Game Department and Commission expand on the management area concept such as the Square Butte Management Area where Fish and Game is doing the required posting for places of access and parking and such areas where hunting may be restricted such as ranch headquarters, etc., and are making a concentrated effort to enforce present laws. The Square Butte area is working and working well. Hunters must walk or be on horseback.

4. Put all Fish and Game personnel that work out of doors in uniform and patch uniform "Law Enforcement Division" or " Game Management Division", etc. and require biologists, etc., to be trained to write tickets and make arrests and to work through the hunting season as law enforcement personnel. This would expand law enforcement which is sorely needed through the hunting season and make for better landowner-sportsman relations. The only disadvantage of the Square Butte Management Area is that its law enforcement comes from the two wardens cover Chouteau and Judith Basin Counties with the extra time they have to spend in the area shorting the rest of their districts. We must have more law enforcement in the field during hunting season.

5. We do not need more legislation to force land access; to do so will certainly just cause more problems than we have today. Fish and Game, sportsmen and sportsmen organizations and land owners must work together to make land access available to as great a degree as practical for all lands - private, state and public. Again, we do not need legislation to accomplish this.

In writing this, I am representing myself and Chouteau County Livestock Protective Association.

Sincerely,

C. E. "Ted" Lucas

C. E. "Ted" Lucas

RECEIVED

MAY 21 1976

MONTANA LEGISLATIVE COUNCIL

May 20, 76

Dear Sirs

Please do not take away the rancher air farmers right to restrict the public from his land.

I dont feel he has to provide an access to state lands for public use

Thank you

Ralph Gourley
Augusta Mt

4C RANCH
BOX 348
AUGUSTA, MONTANA
59410

May 20, 1976

Gentlemen:

I was unable to attend your public hearing in Lewiston in regard to public access to private and public lands but I should like to have my say.

Ranching is a business. It is not a nice life enjoying the scenery and fresh air. It is a hard life and we work very hard. But we are running a business just as any other. I can conceive of no factory, store, or other business which would allow people to enter, explore, help themselves to merchandise, try to run the machinery or any other such transgression.

The right to private property is a very BASIC right. When you take away our rights, you are also giving up your own and that alone should give you pause.

Making a living is a necessity. Recreation is a luxury.

It is popular to say that 90% of the people are fine, it is just 10% who do the damage. My own observation after 25 years is that possibly 1% are alright and you can forget the other 99%. Every year we find new roads made by their vehicles. Fences cut (they always bring their own wire-cutters), steep hills scared by four-wheel drives and the resultant gullies, and the missing cattle.

Ranchers do not raise cattle. They raise grass, the cattle utilize it, and we market our grass thru them. ONE vehicle driving eight miles on our pastures will destroy ONE acre of grass!

We cannot police our places. It is impossible. People come and go as they please. Our only protection, small as it is, is to post No Trespassing signs, and hope it will help.

As for access to public lands and the use therof by the public, we rent those lands from the state for a very good fee. We are responsible for the care and use of those lands and if the state feels that we are not taking proper care, it can take them back. I can only liken this situation to that of a landlord renting a house and then telling his friends that they may use the yard and house if they wish whenever they wish. The renter would certainly object and with good reason!

You cannot legislate people's morality or behavior, no matter how many laws you pass. There is not one of you sitting on this committee who would not resent and object to your home or business being robbed or vandalized. We have a business and we object!

I should also like to point out that this continuing encroachment on our rights as citizens will only end in no rights at all for anyone.

The right to hunt and fish is a privilege, not a right!

Sincerely,
Mrs. A. B. Cobb, Jr.

May 20, 1976

To whom it may concern:

Reference is made to the bills being studied on access to public & private lands by sportsmen.

It is inconceivable to the undesigned that there could be any circumstances where for the privilege of hunting or fishing the property rights of an owner could be violated. If these rights are to be violated let's do away with the wilderness areas, I probably won't ever ride horseback or walk through them; but, no doubt would drive through, if ther were roads.

Kenneth C. Gourley
Box 384
Augusta, Montana
59410

The Carter County Sheep and Cattle Growers Association

May 20, 1976

Subcommittee on Agricultural Lands
c/o Legislative Council
Capitol Station
Helena, MT 59601

Gentlemen:

This association is pleased for the opportunity to respond regarding the problem of public access to public lands. In Carter County we recognize two aspects to the problem, first access to state lands and second access to federal public lands.

We recognize and appreciate that the public has a right to use public lands. However, we are strongly of the opinion that the public's use must not interfere with the operator's lease of these lands. State lands are held in trust for the state's school system and any deduction in value of the lease due to interference with management and operation will reduce the revenue generated for the state's school fund.

Access to state land is not an important problem in Carter County as of now. Seldom is permission asked or are people refused permission to hunt or otherwise use state lands. However, because of the dispersed nature of school sections we object to arbitrarily providing routes of access through private land. If routes are to be provided, substantial and definate need must be shown and then routes of access should be under the supervision of the land owner. Management of private lands is the responsibility and right of the land owner and intrusion, by government designation of access routes, infringe on the owner's rights.

In Carter County federal land managed by the BLM and Forest Service are much more of a problem. In many cases access has been demanded by hunters, snowmobilers and other sportsman. In most cases landowners are willing to cooperate, however, some of the following problems arise:

1. Access in wet weather. Hunters and others want to use areas in all weather. In wet weather roads and watersheds are rutted and damaged. This is particularly a problem in this county because of the shortage of road maintenance funds. Less than half of the 860+ miles of county roads are graveled. Ruts left during hunting

season often are not graded and repaired for 6 months to a year. Local residents are then the victim when public land users damage roads and local taxpayers must support maintenance as best they can. This is a major problem and one that causes many hard feelings. Sportsmen out for a weekend or on a short vacation are often determined "not to let a little mud stop them."

2. Density of use. Too many persons wish to use the same area. BLM land parcels often lie in 320 or 160 tracts or are intermingled with private land. Eight to ten hunters want access to these small tracts the same day.

3. Discrepancy in maps. Locations of public land tracts are shown in BLM maps with trails indicated to them. On the ground the land tract is not fenced, marked or otherwise indicated and the trail is often a cow trail that was identified from an aerial photo. Such misinformation creates misunderstandings between land owners and users.

4. Interference with livestock operations. Livestock are animals of solitude and disturbances to which they are unaccustomed upset them. Motorcycles, snowmobiles, shooting and groups of men walking all disturb them. This disturbance is significant during calving and lambing season.

5. Destruction of grazing. The following indicates the destruction involved:

> One 4-wheel drive vehicle with tires 7 1/2 inches wide drives 500 ft. in and out of an ideal pasture 1,250 sq. ft. = 2 days feed for 1 cow and calf or 4 lbs. of beef -- if he drives 1 mile up a draw and back = at least 10,000 sq. ft. or 20 days feed for 1 cow and calf or 40 lbs. of beef - this is a "Recreationalists Unit of Destruction" no charge except to the hungry millions, (or the waste of energy to destroy energy).

Snowmobiles cause similar damage.

6. Litter. Very few land owners throw beer and pop cans on the land and the public often does.

I would urge the Committee to be cautious in drafting legislation which provides access through private lands. At least in this area the tendency is for land owners to be cooperative and recreational users to be courteous. The above problems are the exception and not the rule. Any blanket type regulation mandating access will not be well received by land owners who must make a living from the land. If we are left alone we can work out solutions that fit the needs and circumstances.

Thank you for the opportunity to comment.

Sincerely yours,

Ned Summers

Ned Summers, Secretary
Carter County Sheep & Cattle
Growers Association

Box 23
Toston, Montana
May 20, 1976

Legislative Council
Capitol Station
Helena, Montana 59601

Gentlemen:

I am writing in reference to the public hearing held in Lewistown on May 15 as I was unable to attend and give my views.

I lease state ground and own private ground on both sides of the property I lease. For as long as I have leased this ground I've always allowed hunting, fishing, and all other types of recreation on both the leased ground and private ground.

I feel if access is forced, many landowners, myself included, will close their private ground. I think that this would be a step backwards toward the promotion of good relations between private landowners and sportsmen.

Therefore, I believe there is no need for an access bill.

Sincerely yours,

Jack Smith

EDUCATION -- CONSERVATION

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

May 23, 1976

Re: Public Access Study

Subcommittee on Agricultral Lands
c/o Legislative Council
Capitol Station
Helena, Montana 59601

Dear Chairman Graham:

The Montana Wildlife Federation is very interested in the interim study of access problems for hunters and fishermen in Montana.

Enclosed is a copy of a Montana Wildlife Federation Access Committee Report. Please make the LEGISLATIVE SUGGESTIONS part of your study and report to the Montana Legislature. Please note that our suggestions only concern public lands(including State Lands) and the right of access to them(exterior boundary). We feel that the land management agency has both a right and obligation to make public land and water available to the public, and an obligation to regulate human impact resulting from concentrated use. Most of the problem is getting public access to the exterior boundary. That is where the State Legislature can help solve many of the access problems.

We have no gems of wisdom concerning the subject of access to private lands nor are we asking for any legislative intervention other than what might be involved in section boundary access(no. 3). We help our members understand landowner rights. We encourage sportsmen to respectfully try to obtain permission to hunt and fish on private lands. We also want sportsmen to understand that the landowner is within his right to deny permission to hunt and fish on his own land.

Thank you for the opportunity to provide information and suggestions for the study and report to the State Legislature.

Sincerely,

Harry McNeal/B.D.

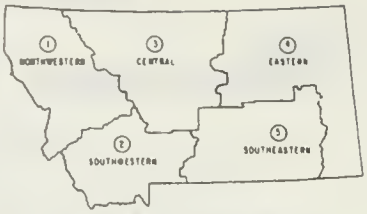
Harry McNeal, President
Route 1 Box 338
Bozeman MT 59715

enc. Information & Legislative suggestions by the MWF Access Committee
Perry Nelson Chairman

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

Route 3, Box 74A
Bozeman, Montana 59715
April 12, 1976



TO: Affiliates, sportsmen, and concerned citizens

FM: Montana Wildlife Federation Access Committee

RE: Information and Legislative suggestions

BACKGROUND INFORMATION - The NRAG Report, printed in 1975, indicated that access was a main concern of Federation members. This year, there is a need for action by all of us in calling for State legislation dealing with the public's right of ingress and egress to public lands and waters for hunting and fishing.

At the last session of the State Legislature, Representative John Vincent of Bozeman introduced HJR 29 calling for the interim study of access problems in Montana. A similar resolution (SJR 26) was introduced in the Senate. Both measures passed and the interim study was assigned to a Subcommittee on Agricultural Lands. Little publicity has been given this interim study. We suspect the subcommittee would just as soon sportsmen ignore them so they can report there is a lack of interest in access to public land and water for hunting and fishing. Those appointed to the subcommittee are: Senator's Carroll Graham, Jack Galt, George Roskie, and Elmer Flynn; Representative's Verner Bertelsen, Fred Barrett, Al Luebeck, and James Fleming.

LEGISLATIVE SUGGESTIONS - Time for the next legislative session is rapidly approaching, so write letters of testimony to Senator Carroll Graham, Chairman, Subcommittee on Agricultural Lands, % Deborah Schmidt, Montana Legislative Council, Helena 59601. Be sure to ask that your letter be made part of the interim study and that a copy be included in the report to the Montana Legislature. Document your access problems and ask for laws that will protect the public right of ingress and egress to public lands, lakes, and rivers, as follows:

1. Ask the State Legislature to restrict the authority of all County Commissions to abandon County roads that provide access to any public land or water. Also, ask that it be legal for the County to give the road to any government agency that will maintain it for the public use.

2. Ask the State Legislature to make it mandatory for each County to provide, at cost, a County road map showing all legal roads in the County (these should be available now but some counties apparently do not have them).

3. Ask the State Legislature to make it mandatory for each County to provide public right-of-way along section boundaries to public land and water (some States already have such right-of-way on section boundaries).

4. Ask the State Legislature to make all waters a public thoroughfare for fishing recreation.

5. Ask the State Legislature to make legal provisions for public hunting and fishing use of State of Montana lease lands.

Send a copy of your letter of testimony to Representative Al Luebeck, Subcommittee on Agricultural Lands, 2710 Amherst Avenue, Butte 59701. Also, make it a point to visit with the subcommittee members in your area.

OTHER INFORMATION - Affiliate clubs should have a local access committee to work with local government agencies on local problems. A recent publication that gives some new approaches to the legal access problems and some information about Forest Service and Bureau of Land Management access policies can be obtained for free. Committee chairmen should get this publication by Vito Ciliberti, called "Access to Public Lands in Montana", by writing to the University of Montana, School of Forestry, Missoula 59801.

Ciliberti makes many recommendations for people who would like to help with the access problem. Probably most important is the need for widespread action by sportsmen to put pressure on the Legislature and on the sometimes foot-dragging government land management agencies. Ciliberti also points out that the land management agencies, in addition to having an obligation to make public land and water available to the public, also have an obligation to regulate the human impact resulting from any concentration of use.

Perry Nelson
Chairman

SOUTHWESTERN MONTANA STOCKMEN'S ASSOCIATION

To: Subcommittee on Agricultural Lands C/O Legislative Council

From: Committee on Public Access to Public Lands, South-Western Montana Stockmens Association

The Southwestern Montana Stockmens Association wishes to be placed on record as opposing unlimited access across private land to public land. We support reasonable access to public land on the basis of need and on the basis of limited liabilit, and expense to the land owner. We further support the basic right of private ownership of private land and the right to deny access to those without legitimate need for access.

This committee recommends to the subcommitte on Agricultural Lands that an extensive study be made on the probable long term effects of broadening access privileges both to the grantee and grantor. We further recommend that research be done on the cost of implementing these public and private programs. We strongly feel the term "access" is much too broad and it should be properly defined and its limits made more specific.

This committee would like to be informed of any more hearings that may be scheduled in the future regarding public access through private lands. The three members of this committee are: J. S.Brenner, Grant; John W. Morse, Grant; and Robin W. Johnson, also of Grant, Montana 59725